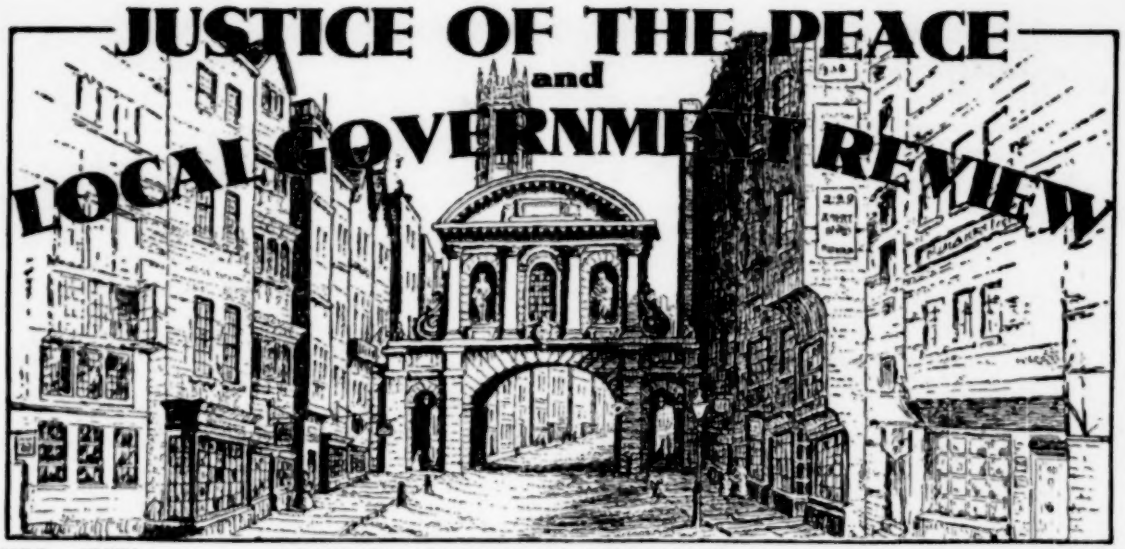

VOL. CXIV. LONDON: SATURDAY, NOVEMBER 18, 1950. No. 46

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Official Advertisements, Tenders, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Miscellaneous Advertisements 24 words 6s. (each additional line 1s. 6d.) Box Number 1s. extra. *Latest time for receipt—9 a.m. Wednesday.*

CARDIGANSHIRE COUNTY COUNCIL

Assistant Solicitor

APPLICATIONS are invited for the post of Assistant Solicitor at a salary in accordance with Grade A.P.T. VIII (£685 × £25—£760 per annum).

The appointment is superannuable and subject to medical examination, and will be determinable by one month's notice on either side.

Candidates should have experience of conveyancing and advocacy. A knowledge of the Welsh language, and of local government law and administration will be advantageous.

Applications, stating age, experience, and qualifications, accompanied by the names and addresses of two persons to whom reference may be made, should reach me not later than Wednesday, November 22, 1950.

J. E. R. CARSON,
Clerk to the County Council.

County Offices,
Aberystwyth,
Cards.

EXMOUTH URBAN DISTRICT COUNCIL

Committee Clerk

APPLICATIONS are invited for the permanent appointment of Committee Clerk in the office of the Clerk and Solicitor of the Council at a salary in accordance with Grade IV of the A.P.T. Division of the National Scales (£480 to £525 by annual increments of £15).

If required, housing accommodation can be made available.

Further particulars and conditions of the appointment may be obtained from the undersigned, to whom applications must be delivered by November 30, 1950.

R. S. RAINFORD,
Clerk and Solicitor.

Council Offices,
Exmouth.
November 1, 1950.

BOROUGH OF ACTON

Assistant Solicitor

APPLICATIONS are invited for this appointment within Grades A.P.T. Va to VIII (ranging from £550 to £760) according to the qualifications and experience of the person appointed. In addition, the appropriate London Weighting of £20 or £30 will be paid.

Previous local government service is desirable but not essential.

A copy of the terms of appointment and of the form of application may be obtained by sending me an addressed foolscap envelope. The last day for delivery of applications is November 25, 1950.

Canvassing will disqualify.

H. C. LOCKYER,
Town Clerk.

Town Hall,
Acton, W.3.

CUMBERLAND COUNTY COUNCIL

Common Law Clerk

APPLICATIONS are invited for the appointment of a Common Law Clerk, at a salary within the Scale £450 × £15—£495.

For particulars, apply to the undersigned.

G. N. C. SWIFT,
Clerk of the County Council.

The Courts,
Carlisle.

METROPOLITAN BOROUGH OF FINSBURY

Appointment of Law Clerk

Finsbury Borough Council invite applications for the appointment, on the permanent staff of the Town Clerk's Office, of a Law Clerk, at a salary in accordance with Grade A.P.T. IV of the National Scales (£480 per annum, rising by annual increments of £15 to £525) plus London Weighting (maximum £30). Applicants must have had substantial experience in a solicitor's office or in the legal department of a local authority. Applications, stating age, experience and qualifications, accompanied by copies of two references, must reach me not later than November 25, 1950. John E. Fishwick, Town Clerk, Finsbury Town Hall, Rosebery Avenue, E.C.1.

COUNTY OF DENBIGH

Appointment of Senior Assistant Solicitor

APPLICATIONS are invited from admitted Solicitors for the post of Senior Assistant Solicitor in the Office of the Clerk of the Peace and of the County Council at a salary of £800, rising, subject to satisfactory service by annual increments of £25 to £1,000 per annum.

Applicants must have good experience in conveyancing and advocacy, and local government service will be a considerable advantage. A knowledge of Welsh will also be an additional qualification.

The appointment will be subject to the general Conditions of Service applicable to the County Council's staff, and to the provisions of the Local Government Superannuation Act, 1937. The successful candidate will be required to pass a medical examination and his appointment will be terminable by two calendar months' notice on either side.

Canvassing, directly or indirectly, will disqualify.

Applications, for which no form is issued, stating age, education, qualifications and experience, together with a copy of one recent testimonial and the names of two referees, must reach the undersigned not later than December 9, 1950.

W. E. BUFTON,
Clerk of the County Council.

County Offices,
Ruthin.
November 8, 1950.

NOTTINGHAMSHIRE

Appointment of Male Probation Officer

THE Nottinghamshire Combined Probation Committee invite applications for the appointment of full-time Male Probation Officer, at a salary in accordance with the Probation Rules, 1949.

Forms of application, with conditions of appointment, may be obtained from my office, and completed forms must be received by me not later than December 2, 1950.

K. TWEEDALE MEABY,
Clerk of the Peace.

Shire Hall,
Nottingham.

CITY OF NOTTINGHAM

Appointment of Deputy Town Clerk

THE Nottingham City Council invite applications from Solicitors experienced in the work of local government for the appointment of Deputy Town Clerk at a salary of £2,000 per annum.

The appointment is subject to the Local Government Superannuation Act, 1937, and the successful applicant will be required to pass a medical examination.

Applicants should provide the names of two persons to whom enquiries can be addressed.

Applications, endorsed "Deputy Town Clerk" on the envelope, should reach me not later than Friday, December 8, 1950.

J. E. RICHARDS,
Town Clerk.

The Guildhall,
Nottingham.

HAMPSHIRE COUNTY COUNCIL

Motor Taxation Department

APPLICATIONS are invited for the appointment of a Clerk in the Motor Taxation Department. Salary according to National Scale, A.P.T. III (£450—£495).

Applicants should be experienced in all branches of motor licence work. Applications, stating age, qualifications and experience, together with names and addresses of two persons to whom reference may be made should be sent to me by November 27, 1950.

G. A. WHEATLEY,
Clerk of the County Council.

The Castle,
Winchester.
November 10, 1950.

HERTFORDSHIRE COUNTY COUNCIL

Appointment of Assistant Solicitor

APPLICATIONS are invited for the appointment of Assistant Solicitor at a salary within A.P.T. Grade VI (£595—£660 per annum). Applicants must have a sound knowledge and experience of conveyancing. Previous Local Government experience is not essential.

The appointment is subject to the provisions of the Local Government Superannuation Act, 1937, and the successful applicant will be required to pass a medical examination.

Applications, stating age, education, qualifications and experience, and the names of two Referees, must reach the Clerk of the County Council, County Hall, Hertford, Herts., not later than December 6, 1950.

Justice of the Peace
and
Local Government Review

[ESTABLISHED 1837]

VOL. CXIV. No. 46. Pages 658-673

LONDON : SATURDAY, NOVEMBER 18, 1950

Offices: LITTLE LONDON, CHICHESTER, SUSSEX

[Registered at the General Post Office as a Newspaper]

Price 1s. 8d.

NOTES of the WEEK

The London Police Court Mission

All those who had any part in establishing and developing this Mission may well be proud of the fact that from such small beginnings there has developed the present probation system with its nation-wide organization and its incalculable influence for good. We have just had the pleasure of reading the Mission's annual report for 1949-50. It records that owing to heavy capital expenditure incurred in the purchase of two new Homes (High Beech, Nutfield, Surrey and Coombehurst Children's Home, Caterham, Surrey), the Mission is in urgent need of additional subscriptions and donations. The report contains reports from those in charge of the approved schools and the probation hostel and home run by the Mission and also from the Coombehurst Children's Home, the Hampstead and North London Women's Shelter (named Pearson House in memory of the late Harry Pearson, O.B.E., M.A.), the probation trainees' hostel at Chelsea and from the Mission's Guild and Assistance Department at Hobart Place. We have not space to refer to the reports on all these activities, so we select that of Mr. Joyce, the headmaster of the Cotswold School. We feel sure that his approach to the problem of the treatment of young offenders is one that will appeal to many of our readers. He says: "I would give place to no one in the matter of affection for the youth of today. Many of them may be delinquent, but I think they are extremely attractive and lovable at the same time. Nevertheless, I am not prepared to subscribe to the view that youth (with a very large capital Y) must be pampered and allowed free rein." He complains that it is the lower standard set and accepted by many adults which is responsible for some of the offences of the younger generation, who are "growing up in a society that—for one reason and another—is weaker in principle and precept." He pleads for reasonable and wholesome discipline to be exercised by parents in place of their being encouraged to accept ready-made excuses for treating their erring children as difficult cases. He asks also that the press should be scrupulously careful never to glamourize crime in the eyes of young people.

Mr. Joyce goes on to describe some of the methods used at the school. One principle adopted is to make the boys realize that they must accept responsibility for their actions and that punishment is not something imposed by an irritated adult, but something necessary in that their own actions will produce certain results. He thinks that restitution, in appropriate cases, can play an important part in bringing home to offenders the error of their ways. If a boy in the school steals twenty cigarettes he must, out of his earnings, repay thirty, the extra ten being interest on the "loan."

There is more we should like to quote from this report, but we hope we have interested our readers sufficiently to induce them to seek a copy of the report to read for themselves.

Precedent

The man in the street, with little or no knowledge of the law, is sometimes heard to criticize the English system of binding decisions. He has heard that a court is bound by precedents, and he asks, "Why should a judge have to give a wrong decision in 1950 because another judge decided a case wrongly in 1850?"

Of course, things are not as bad as that, but it is difficult to explain to the layman the undoubted advantages of paying heed to precedents. Judges are able, in case of need, to "distinguish" earlier cases of doubtful validity, and occasionally to overrule them, so that it is not often that the wrong decision stands in the way for very long.

The Modern Law Review for October contains an article by Professor Glanville Williams, which includes some interesting observations on this question of precedent. The article is entitled "Bigamy and the Third Marriage," and is mainly concerned with the case of *R.* v. *Taylor* [1950] 2 All E.R. 170, in which the full Court of Criminal Appeal definitely overruled the decision of the court in *R.* v. *Treanor* [1939] 1 All E.R. 330. "The reason given on the question of precedent is of great interest," says Professor Williams, "and would seem logically to be capable of application even to the Court of Criminal Appeal when sitting with the usual three judges." He points out that the Court of Criminal Appeal is properly constituted of three judges, and argues to the effect that it would often be a matter of great difficulty to ascertain whether a decision was that of a "full" court or of a division, since, as he asserts, three judges can constitute a full court.

One reason given by the Court for overruling the earlier decision of the Court was that the liberty of the subject was involved.

Professor Glanville Williams goes on: "If the decision on the point of precedent applies to a division of the Court of Criminal Appeal in respect of its previous decisions, it would seem to apply equally to a Divisional Court of the High Court in respect of its previous decisions, when that court sits in criminal cases, and when the previous decision was in favour of conviction. It would also seem to apply to the House of Lords in the same way, and to be capable of application even to civil appellate courts where the precedent case has curtailed a constitutional liberty. In this respect the decision is a welcome reaction from the tendency of recent years to make the doctrine of precedent too rigid."

Common Law Misdemeanours

There has been a widespread impression that the maximum punishment on conviction of a common law misdemeanour is imprisonment for two years. This no doubt arose because when penal servitude could be imposed, never for less than three years, imprisonment was for a less term, and under the Penal Servitude Act, 1891, where penal servitude was authorized as a punishment for an offence, imprisonment for not more than two years could be substituted unless the relevant statute otherwise provided. Thus the practice of imposing not more than two years' imprisonment was usually followed in cases of common law misdemeanour as well as in statutory offences.

However, there is no such rule of law, and it is more correct to say as is stated, for example, in *Cross and Jones's Introduction to Criminal Law*, that the punishment is normally two years. In *R.* v. *Morris*, p. 634, *ante*, the Court of Criminal Appeal upheld the sentence of four years' imprisonment passed by Hallett, J., upon a conviction of common law conspiracy. Counsel had said that there was no record of a sentence exceeding two years' imprisonment for a common law misdemeanour during the past 100 years.

In the course of delivering the judgment of the Court the Lord Chief Justice said that for a misdemeanour the punishment was imprisonment and/or a fine and that the penalty was always in the discretion of the Court. Magna Carta provided that the term of imprisonment should not be excessive and the Bill of Rights provided that excessive fines should not be imposed, but the form of imprisonment and the fine under common law remained in the discretion of the Court. The old distinction between penal servitude and imprisonment had disappeared, and there was now no reason why a sentence of more than two years should not be passed.

Sheffield Juvenile Court

The report of the juvenile court panel for Sheffield for the year ended June 30 last, shows that there was a substantial decrease, compared with the figure for the previous year, in the number of juveniles brought before the court, and that the figures for the period covered by the report are very little above those for 1939. Although there is a welcome decline in the number of cases of stealing, and breaking and entering, the report states that there is no real indication at present of any raising of the general standard of honesty among juveniles. The figures might suggest that there is some evidence of improvement, but, no doubt, the writers of the report based their opinion upon trustworthy information obtained from people who are in close touch with juveniles, whose opinion may be as valuable as such statistics as are available. There is a considerable increase in the number of juveniles in need of care or protection or beyond control, and, as every one experienced in juvenile courts knows, these cases often reveal a worse state of affairs than do many criminal charges.

The report laments the failure to provide any attendance centre, detention centre, or remand centre for the use of the Sheffield court. Regret is also expressed that there are still no adequate means of dealing with mentally handicapped children. "We find it difficult to understand," goes on the report, "why some means could not be found of setting aside one at least of the existing approved schools for the reception of juveniles of low grade intelligence and we believe that no other single step would be of greater help to juvenile court magistrates in carrying out their duties."

The standing committee on juvenile delinquency appointed in May, 1949, at the request of the Home Office and Ministry of Education, has met regularly, and a number of lectures have been given which were well attended.

The Meaning of "Ordinarily Resident"

The jurisdiction of courts, including magistrates courts, sometimes depends upon the place in which one of the parties resides. It is therefore of importance that questions of residence should be correctly decided in the light of the decisions of the superior courts.

In some statutes the expression "ordinarily resides" is used, in others the word "resides" alone is employed. In the Maintenance Orders Act, 1950, we find both used, in different places. In s. 1 there is a reference to the place where "the parties last ordinarily resided together as man and wife." It is natural to look for some difference of meaning between ordinary residence and simple "residence," and it may be that in this instance there is some difference. However, on the existing case law, as explained by Pilcher, J., in the recent case of *Hopkins* v. *Hopkins* (*The Times*, October 31) there seems to be no difference between "ordinarily resident" and "resident." This latest case was a wife's petition for divorce, and it failed because the learned judge found that the petitioner was not ordinarily resident in England for the three years preceding the presentation of the petition. The judge referred to certain tax cases as showing that the use of the word "ordinarily" added nothing to the meaning of "resident." *Hopkins* v. *Hopkins* turned upon the words of s. 1 (1) of the Law Reform (Miscellaneous Provisions) Act, 1949. The words of s. 1 of the Maintenance Orders Act, 1950, will no doubt be the occasion before long for a decision of the High Court, as to whether the addition of the words "together as man and wife" adds some qualification to the words "ordinarily resided."

Sub-Normal Children in Approved Schools

There is frequent complaint about the shortage of accommodation in special schools for children who are mentally handicapped. Reports of various juvenile court panels which we have received testify to this. It is said that one result is that some of these children are sent to approved schools, where the staff is quite unable to fit them into the general scheme of things, and in which the children themselves are bound to be numbered among the failures.

Mr. C. A. Joyce, well known as the head of an excellent approved school and formerly as a borstal governor, has put forward a point of view that must be new to many people, and which is also somewhat cheering. Writing to *The Times* of October 23, Mr. Joyce pleads that, subject to the provision of an adequate staff, approved schools should be given an opportunity of dealing with children who appear to be below the usual standard. He quotes the case of a boy with a low intelligence quotient who after narrowly escaping certification, was sent to Mr. Joyce's approved school, reached the top of his form, and had a most successful school career. Mr. Joyce adds that in his opinion this was because he had to struggle to keep up with other boys and did so.

Obviously it needs the best type of staff in sufficient numbers if approved schools are to cope with young people who are apparently sub-normal but it is well worth trying. A dull boy living and working with none but dull boys may well become apathetic and deteriorate. Among brighter boys and helped by sympathetic teachers, he may improve. If he cannot, he will have to be relegated to a special school. Mr. Joyce's plea is

that he should have a chance at all events of mixing with normal boys before that step is taken.

The instance he quotes gives one a feeling of uneasiness about relying too implicitly upon intelligence quotients and mental ages.

Rates, Grants and Boundaries

Answers which may be given to the deputation to the Ministry of Health from a northern county seeking an alleviation of the local rate burden are many and various. A prominent place may be anticipated for the provision in the Local Government Act, 1948, s. 14, for "investigations" to be made into the working of Part I of that Act in the year (1952 or 1953) in which the first new valuation lists come into force, as a reason against legislation in the near future to meet the county council's allegation of undue detriment as regards Exchequer Equalization Grant.

That answer would be relevant to the possibility that re-valuation will diminish two sorts of disparities of rate poundages partly relied upon by the county council in making out its case for financial review. Apparently, the average rate in the county is 1*s.* 6*d.* in the £ above the average of about 18*s.* for England and Wales, which, incidentally, is also true of Wales alone which has much in common with the northern county; the upward margin of poundage may be justifiable because a lower "tune" of valuation reverses relationships measured by the amount of rates per head of population. A similar argument could not be advanced in this instance to explain the other sort of disparity, *viz.*, a downward margin of about 5*s.* in the £ between the rate poundage levied inside the border of the northern county and that levied outside the border in an adjoining county; local rates in the higher-poundage county are, on average, about £6 5*s.* per head of population, compared with about £4 10*s.* in the lower-poundage county.

Those averages are risky guides to intrinsic burdens, partly because the extent and quality of local services may differ, though the possibility of such difference has less validity nowadays as an explanation of financial divergencies. A more likely partial explanation in the present case is that the higher-rated area has less of the advantage derived by the lower-rated area from drawing upon richer urban resources through the county council's precept, which is one of the benefits obtainable by rural areas from the present two-tier structure in counties of mixed characteristics. This recalls the opinion of the late Local Government Boundary Commission that the northern county is "far too small in resources and population to continue as a separate administrative county," and their recommendation of an amalgamation which "would result in a well-balanced population with resources comparable to those of many well-run counties." In the last analysis, differences in local rate burdens must be expected on opposite sides of administrative boundaries whether the dotted lines were made one or one hundred years earlier, unless, unfortunately, more of local self-government is obliterated by a thicker rash of central agencies.

A relatively large addition to rateborne expenditure, after crediting additional Exchequer Equalization Grant, apparently increasing annual rates levied in the northern county by about 2*s.* in the £, would probably be noted by the Ministry of Health in connexion with future "investigations" under the Act of 1948, to be looked at if no changes emanate from joint consideration of boundaries and functions by the associations of local authorities, or otherwise. Rising expenditure of local authorities seems more likely than not during the next year and longer, in keeping with higher living costs of ratepayers, giving two sharp edges, alongside a third concerning restriction of services, to the problem of providing more cloth or making the coat smaller. Sparsely populated rural areas will, it seems, have a stronger case than others for an improvement of the "weighting" factor in the Act of 1948, s. 3. Results from the deputation to the Ministry of Health will interest many local authorities, as much for their bearing on analogous circumstances as for any hints, open or implicit, on the way the wind may be veering in matters of general concern.

ALL CATS ARE GREY

The case of *Willey* v. *Peace* [1950] 2 All E.R. 724; 114 J.P. 502, upon which we commented at p. 519, *ante*, though it turned directly upon s. 66 of the Metropolitan Police Act, 1839, can be regarded as one more link in a chain of decisions upon the right of the police to question, arrest, or search persons whom they suspect of having committed or being about to commit an offence. The report does not say what Willey was doing to produce the suspicion about himself which was first conceived by a constable in the street, who asked him what he was doing: though the Lord Chief Justice stated that he was acting in a manner calculated to arouse the suspicion of any police officer, there can be innocent reasons even for loitering. Nothing seems to have turned on this, eventually, for Willey went to the police station of his own accord. Had Willey been "detained" by the first constable, the question for the Court would apparently have been the same as one of those which had to be determined as a result of his being searched by the second constable, namely the reasonableness of the suspicion entertained about him. If the suspicion is not reasonable, neither search nor detention can be justified. Willey evidently thought, at each stage, that to suspect him was unreasonable, so that he was entitled to resist. Although the Lord Chief Justice's judgment suggests that Willey (in vulgar phrase) deserved all he got, and so far as his case is concerned no harm is done, yet there is a danger in such a section as s. 66 of the Metropolitan Police Act, 1839. To give to every constable a power of stopping, searching, and detaining (note the order of the verbs) any and every member of the public on suspicion, with no remedy for the person searched unless he can show in subsequent proceedings that the constable's suspicion was unreasonable, is pretty drastic. From time to time we come across newspaper reports of what looks like rather a free use of the section, and we think the police powers under that Act, which do not exist in the general law, though there are parallel powers under local Act at Liverpool, and may be elsewhere, call for watching by the public and by magistrates.

There was, for example, earlier this year a case where a company chairman, leaving his mother-in-law's house in south London on foot, some time after midnight, was stopped by a constable who asked where he had been, and requested to see the contents of a handbag he was carrying—it might be too much to say "demanded," though a demand would presumably have followed, if the person stopped had not complied with the request. The constable could, if the case had been carried further, have given no better ground for the request or demand (in terms of the statute, no other ground for "reasonably" suspecting that the person stopped was "conveying anything stolen or unlawfully obtained") than that it was late at night—

as he (the constable) remarked impertinently, when an answer was given him which was the whole truth: "People do not visit their mother-in-law after midnight." Fortunately, the person stopped in this case had a sense of humour, and contented himself with inviting the constable to put his hand into the bag—where he encountered three pounds of clammy, bloody, horseflesh, a present from the mother-in-law to her daughter's dog. And no legal proceedings followed. No doubt in a quiet suburban road where everyone else has gone to bed a middle aged, respectable, and wealthy chairman of a manufacturing company can after midnight seem to a policeman's eye much like a burglar, as there have been burglars who could well have passed even by day for company chairmen, but the fact that a man walking late at night along a residential road in London is carrying a handbag is hardly, in itself, a reason for interrogating him, nor is his statement when interrogated, that he had been spending the evening with his relatives, a reason to demand a sight of the contents of the bag. Again, there was a case reported in the newspapers this year where a young man, prominent in the public life of a London borough, stopped to put on his overcoat one stormy midnight, and was seen by a constable to be struggling with an unwieldy attache case as well as with the billowing coat. This for some reason caused the constable to interrogate him as to the reason for his being in the street so late. He did not (like Mr. Willey) retort with "obscene abuse" but stated, as was true, that he had been with his fiancee at her father's house—whereupon the constable insisted on his walking back there, and aroused the house to obtain verification of the statement. Who put the story in the newspapers did not appear upon the surface, for there were no legal proceedings, nor indeed is it easy to see how there could have been, unless Romeo had brought an action, claiming that the constable's insistence upon his going back to the house of Capulet was tantamount to an unlawful arrest. The occurrence of incidents of this sort makes it worth while to examine a few of the relevant decisions.

In *McArdle* v. *Egan and Others* (1934) 98 J.P. 103, an action for damages against Southport police, the Court of Appeal had to deal with a case in which constables had arrested the plaintiff upon suspicion of having committed a felony, in reliance on the common law. The court quoted the judgment of Lord Chelmsford in *Lister* v. *Perryman* (1870) L.R. 4 H.L. 521, where he says at p. 535, that there can be no doubt that the question, what is reasonable and probable cause in an action for false imprisonment, is to be determined by the judge. It is, that is to say, not merely a question of fact as had at one time been thought. In determining the question, the judge has however to ask himself about the facts, that is, whether the facts known to the police at the time of the arrest were such as to give cause for suspicion in the mind of a reasonable man. If he answers this question in the affirmative, there ought to be judgment for the police and, if he answers it in the negative, there ought to be judgment for the person who complains of the arrest. This was among the earliest in time of the cases we shall consider in this article: we quote it primarily because Lord Hewart, C.J., in a very short leading judgment, quoted with approval from *Bullen* v. *Leake*: "A constable is justified in arresting a person without a warrant, upon reasonable suspicion of a felony having been committed, and of the person being guilty of it." Note that this is common law: it applies only to suspicion of felony, but where there is that suspicion (sc. *vicer*, reasonably entertained) the constable can arrest. By local Acts, such as the Metropolitan Police Act, 1839, and the Liverpool Corporation Act, 1921, to be further mentioned below, the power to arrest on suspicion is enormously extended. But, applying Lord Chelmsford's judgment, so far as the special provisions of the Metropolitan Act allow it to be applied, the position seems to us to be that the mere carrying through the streets of some bulky object after dark should not, in itself, arouse suspicion in the mind of a reasonable man. There may be half a dozen causes for a pedestrian to carry a bag at night, even in a quiet neighbourhood where not many people walk about, as distinct, for example, from a road leading directly from a main line station. Once this is said, it becomes a question whether the police, even in London, can properly take it upon themselves to stop pedestrians and demand to see what they are carrying. It might well be held, if the pedestrian in such a case refused to show the contents of his bag and was thereupon treated by the constable as a person who could be detained and searched, or searched and detained, under the special provisions of the Metropolitan Police Act, 1839, that an action for damages should be successful.

The case of *Dumbell* v. *Roberts and Others* [1944] 1 All E.R. 326; 108 J.P. 439, was decided upon ss. 507 and 513 of the Liverpool Corporation Act, 1921, aptly described by Lord Simonds in *Christie* v. *Leachinsky*, *infra*, as "that curiosity of penal legislation." It should be said that its date belies that Act: it was a consolidating Act, and the power with which we are concerned here originated in 1842, being copied from the City of London Act of 1839, mentioned later in this article. The Court of Appeal decided that, where special powers of arrest without warrant are granted by a local Act, the police are liable in damages where they make an arrest under the Act without complying with the conditions in the Act, and that, when an action for damages against them comes into court, they cannot rely upon common law powers of arrest unless they have pleaded those powers before it is decided that the statutory powers are inapplicable. In the particular case neither common law nor statutory powers were available, so that the police position was hopelessly bad. The chief interest of the case for our present purpose lies in the parallel, pointed out by Goddard, L.J. (as he then was), between s. 513 of the Liverpool Act and s. 24 of the Metropolitan Police Courts Act, 1839, under which, as read with s. 66 of the same Act, the metropolitan police acted in the cases we have been considering of the devoted London son-in-law with the dog's dinner in his attaché case, and the young Londoner who lingered upon his Juliet's balcony. The plaintiff in *Dumbell* v. *Roberts* had been stopped in the street by two constables, and questioned concerning a package he was carrying on his bicycle. There was no evidence that he had stolen the goods in the package, or received them knowing them to be stolen, but he was charged with being in unlawful possession within the meaning of s. 507 (1) of the local Act. The charge was in due course dismissed by the stipendiary magistrate, whereupon Dumbell successfully brought an action for wrongful arrest. *Stevenson* v. *Aubrook and Others* [1941] 2 All E.R. 476, is a link in the chain, although the power in question was that given by s. 6 of the Vagrancy Act, 1824. This makes it lawful for "any person whatsoever to apprehend any person who shall be found offending" against the Act. The charge was that of indecent exposure, and the two constables who arrested the plaintiff, though they did not claim themselves to have "found" him exposing himself, acted honestly upon a plausible and specific piece of information from a woman. After the arrest, while plaintiff was in custody at the police station, Aubrook went back to get fuller details from the woman, who then admitted that she had not seen the alleged offence. Plaintiff was thereupon released from custody and, although he was formally charged before the magistrates next day, no evidence was offered and the charge was withdrawn. The defendants had reasonable ground for honestly believing that the plaintiff had committed the offence for which they arrested him; nevertheless it was held that they were not justified in arresting without a warrant, when the offence had not in fact been com-

mitted. The particular importance of this point lies in the contrast here between the general law, as embodied in the Vagrancy Act which is everywhere in force, and the peculiar police powers which exist in London, Liverpool, and perhaps some other places.

The case of *Christie* v. *Leachinsky* [1947] 1 All E.R. 567; 111 J.P. 224, went to the House of Lords, and so became the leading authority upon the power to arrest without warrant. This was yet another case where the Liverpool police were involved, and had invoked the peculiar powers of the Liverpool Corporation Act, 1921, as well as those of the general law. Scott, L.J., in the Court of Appeal, and Lord Simon in the House of Lords, emphasized the importance of the issue raised, in that the liberty of the subject is at stake. Section 507 of the Act of 1921 empowers a court of summary jurisdiction to impose a penalty upon a person charged with having in his possession anything which there is reasonable ground to believe or suspect has been stolen. Section 513 enacts that it shall be lawful for any police constable and all such persons as he shall call to his assistance to arrest and detain without warrant any person whose name and residence shall be unknown to such constable, and cannot be ascertained by him, and who shall commit any offence against the provisions of the part of the Act in which s. 513 is contained. The words beginning with "and who" are doubly strange, when s. 513 is prayed in aid of s. 507, because, until the arrested person has been brought before a court, it cannot be known for certain whether he has committed an offence against the Act—or any other offence. Apart altogether from this, the arrest of Leachinsky was not justified under s. 507, because his name and residence were not unknown. He was in truth arrested at his own warehouse, by constables who entered it and carried out a search without a warrant (another step condemned by Lord Simon, though nothing turned on, in view of the later steps); there was no doubt about his identity, and he had lived at the same address for eighteen years. He was in custody for a week. Inasmuch as the police were constrained to admit that the local Act upon which they first relied was not available to them, the case gave the House of Lords an opportunity for authoritative examination of the general question, of the power to arrest without warrant on suspicion, and the duty, where suspicion exists which justifies the arrest, to inform the person arrested (as Leachinsky was not informed) of the facts or alleged facts giving rise to suspicion of an offence which can be charged against him. Upon this second, or general law, aspect of the case there was a complication in that, immediately after the charge of "unlawful possession" under s. 513 of the local Act had been dismissed by the stipendiary magistrate, Leachinsky was re-arrested by the police, upon suspicion of being "wanted" at Leicester upon a charge of felony. The Leicester charge in turn collapsed, being shown to be based upon false information given to the Leicester police, but the information had been given; was *prima facie* sufficient to found a charge of felony against Leachinsky, and was reasonably believed by the Liverpool police. Upon his claim to damages in respect of his second arrest Leachinsky therefore failed, because the House held the arrest to have been justifiable at common law, but the case is valuable, from the point of view of the private person's right not to be molested, because Leachinsky succeeded on the first and more important portion of his claim.

Lastly we go back to *Ledwith and Another* v. *Roberts and Another* [1936] 3 All E.R. 570; 101 J.P. 23, which was another decision upon the Liverpool Corporation Act, 1921. The plaintiffs succeeded in a claim against two Liverpool police constables, who had suspected them of trying to rob a telephone coin box. It was held that the arrest could not be justified either at common law or under the local Act and the powers of the Vagrancy Act, 1824; these Acts and their statutory predecessors were exhaustively examined in the judgments. Lord Justice Greer remarked: "It appears to me very difficult to think that the legislature intended to leave it to a constable to arrest without warrant any citizen whom he found loitering in a street if he, on what he deemed to be reasonable grounds, suspected that he was loitering for the purpose of committing a crime. In my judgment the powers of a constable to arrest without warrant are confined to cases in which he finds frequenting or loitering, etc., a person who has by his previous conduct become a suspected person or a reputed thief." The context shows that his lordship was speaking so far of the general law: s. 4 of the Vagrancy Act, 1824, as amended by s. 15 of the Prevention of Crimes Act, 1871. He went on to say that the same principle applied in the construction of s. 513 of the Liverpool Corporation Act, 1921, basing himself on the decision in *Bowditch* v. *Balchin* (1850) 14 J.P. 449, a case upon another local Act, namely s. 18 of the Act for Regulating the Police in the City of London, a section very similar to s. 66 of the Metropolitan Police Act, 1839, and s. 513 of the Liverpool Corporation Act, 1921. The concluding remarks in the judgment of Scott, L.J., in *Ledwith* v. *Roberts* are worth putting on record: "If the Liverpool Act of 1921 and the old London Act of 1839 create different offences and confer different powers of arrest from those of the general law, it is surely time to abandon the system of such local variations, whatever may have been their justification in earlier times. Today crime and personal liberty ought not to vary from town to town, as must be the case if they are to depend on municipal variations in the local and personal Acts of Parliament. They ought to be the same throughout the length and breadth of the land. Why should such provisions be inserted in local Acts at all?"

These remarks, in our opinion, deserve far more attention than they have so far received. We do not wish to be dogmatic on the question whether powers such as those given by the local Act sections ought to exist at all, but we do say, with all emphasis we can command, that Parliament ought to put an end to the system of having different criminal law and different powers for the police according to accidents of local legislation of a century ago.

London constables upon their beat at night have a grave responsibility for the prevention and detection of crime, a responsibility which involves, in such cases as we have mentioned, the exercise of a different discretion. So have constables elsewhere acting under statute or at common law. So much must be admitted: it was emphasized, in regard to the Vagrancy Act, by Hallett, J. in *Stevenson* v. *Aubrook*, *supra*. On the other hand, although it is said that "noctivagation" was once regarded as an offence in some towns, yet it has not—so far as the statute law has gone—been made an offence, even in the metropolitan police district, to "have a frisk" like Dr. Johnson, or to walk about at night with or without bulging pockets or a hand-bag. The ordinary citizen who has been visiting friends and filled his pockets with their apples, or has arrived by a late train and is walking home (from preference or because no cab is available) has something of a grievance, if a conscientious constable insists on treating him as a potential criminal: still more, if the constable openly declares disbelief in an explanation which is true. Whilst people who rest secure in their homes under the shield of police protection, having neither the occasion to walk about at night nor Beauclerk and Langton's liking for noctambulation, will naturally and properly sympathize with the constable, some sympathy is also due to a member of the public who is stopped by the constable for no better cause than that he is out of doors.

UNWISE SPENDING ON EDUCATION?

In the early 1930's when economy was widely preached, the speaker rarely failed to mention in his introductory remarks that by "economy" he meant wise spending and not dangerous curtailment of essential services. Although nowadays the subject of economy has ceased to any noticeable extent to be popular, widespread tax evasion suggests that it is highly desirable that the right type of economy should return to fashion in a big way. If the time of lawyers accountants and spivs now used in devising ways legitimate and illegitimate of dodging the tax collector was devoted to productive work a considerable rise in the country's output should result. Wise spending and lower taxation could go hand in hand.

The education service is easily the most costly of those for which local authorities are responsible, representing in counties about fifty-three *per cent.* of the total expenditure of those authorities. Tables published by the Society of County Treasurers and the Institute of Municipal Treasurers and Accountants show that in the year 1948-49 the total cost of education was £220,448,000. This figure by itself does not perhaps convey a great deal to the ordinary reader, but it becomes interesting when compared with others. For example, in the year 1936-37 the total cost of the education service administered by the local authorities was £94,989,000; in 1948-49, therefore, the cost had increased by £125,459,000. The 1948-49 costs, moreover, are of little use as gauges of future expenditure because of the rapidly rising costs of administering the present service and the cost of foreshadowed expansion. The most important single item of education cost is teachers' salaries. Negotiations for increases have been going on for some time, and it was recently reported that the Burnham Committee had recommended increases of approximately 30s. per week for men and 25s. per week for women, and increases in the allowances for graduate qualifications. If this recommendation is accepted £15 million will be added to the annual cost of education. No firm estimate of the cost of implementing development plans is available but in one local authority with a school population of nearly 120,000 the suggestions put forward would cause capital expenditure of at least £33 million and result in increased annual revenue expenditure of £838,000.

Evidently there is no hope of any reduction in education costs: instead a tremendous increase may occur. What has been done to limit increases?

The Ministry of Education considered the possibility of economies a year ago, and issued two circulars dealing with revenue expenditure and educational building costs respectively. The suggestions made in the first circular for real reductions of net revenue expenditure were for the most part insignificant. They consisted of proposals to reduce expenditure on recreation and physical training, distinctive school clothing (since partially rescinded), transport of pupils and administration, of directions to increase charges for school dinners to 6*d.*, and compulsory borrowing for meeting a large part of capital expenditure. In one of the largest education authorities they resulted in a real saving of expenditure of £80,000. The annual education bill in this authority is over £5,500,000. The mountain had indeed laboured and brought forth an emaciated rodent.

Alarmed by the high cost of building the Minister also announced that for building projects started in 1950 the objective must be to reduce costs by 12½ *per cent.* of the average costs in 1949, and accordingly reduced the prescribed standard of accommodation. At the same time the Minister set up a Building Costs Committee to make recommendations designed to ensure that schools were built at a lower cost without losing their effectiveness. The first recommendations of the Committee—relating to new secondary schools—have already been published. It has been stated further that for 1951 the reduction of 12½ *per cent.* on 1949 costs will be insufficient and the cost of new schools to be started in that year must not exceed £240 per place in secondary schools and £140 in primary schools.

Is the huge amount of money going to education wisely spent? We suggest that the answer cannot be given today because the subject has never been seriously investigated. Too often in the past it has only been necessary for the advocates of unchecked spending to utter at the right time one or two well loved sentences such as "the children must not suffer," "the children must be well fed," "the interests of the child must be paramount," and they have secured all that they desired. Blame must be attached both to the Ministry and to local authorities for the present state of affairs. The Ministry often fail to follow up their own circulars, of which some local authorities are prone to take but little notice. For instance, in the Ministry circular of last year, referred to earlier, reference was made to the greatly increased cost of administration, and local authorities were asked to review their procedure and establishments so that at least interim reductions of staff were made to take effect in 1950-51. In a number of cases local authorities replied that this was impossible. What have the Ministry done about it?

Many local authorities have never taken much interest in the cost of education: it is instructive to see what happens when they do. The school meals service was 100 *per cent.* grant aided from April 1, 1947, and from that date a system of unit costing was introduced. The system had a mixed reception. Many education officers welcomed it: others were inclined to regard time spent on checking costs as wasted and an undesired interference with other duties. Experience of the system has now shown that its introduction was a wise step resulting in the saving of millions of pounds, and that this has been accomplished without the nutritional value of meals supplied to the children falling below the desired standards. Where high costs were shown by the estimates investigations have taken place and in many cases facts have come to light which have made it possible to reduce costs. These are some of the ways in which savings have been made:

1. Discovery of overcharges by tradesmen, particularly butchers. One authority has recovered £6,600 over a period of four years.
2. Introduction of system of tendering by suppliers. Large consumers should not pay full retail prices, although many authorities were doing so.
3. Check on the number of meals requisitioned and prepared revealed failure on the part of the staff responsible to verify numbers of meals required. In some cases a fixed number was requisitioned, based on a period long out of date. It was not uncommon to find meals being ordered up to twenty *per cent.* in excess of proper requirements. A considerable part of such excess inevitably found its way into the swill bin.
4. Use of menus scientifically designed by school meals organizers enabled costs to be kept within the agreed figure, and ensured at the same time that nutritional values were maintained.
5. Prompt preparation of data enabled adjustments of staff to be made without undue time lag. This is particularly

important when the number of meals is falling. Local pressure can be trusted to secure prompt adjustment when the trend is upwards.

Many other examples come to mind, some of policy and some of administration, where cost investigations might well prove fruitful, the administrative matters not being of necessity the least important. Thus, although we may question the policy of paying 10*s.* a week to boy scouts to go to camp (which most of them used to do quite well without assistance when family earnings were much below their present levels), the total amount is relatively small. The same cannot be said of purchases of equipment and materials. How many education authorities are perfectly satisfied that in all cases they are buying the most satisfactory articles at the lowest prices? In how many cases are buying arrangements in the hands of experts, and in how many are they the responsibility of clerks of undoubted integrity but limited knowledge of the business world outside their office windows?

Assistance to students attending universities is another increasingly large item of expenditure, particularly now that under the latest Ministry income scale parents receiving up to £2,200 a year qualify for an award. There is an obvious duty here to verify the returns of income on which the awards are based, but it is at least doubtful whether an effective check is imposed by some authorities.

Wherever the subject of costing is mentioned there are always people who bring forward a variety of reasons why the compilation of figures for the particular service in which they are interested should not be undertaken, the usual ones being the insuperable difficulty and waste of time involved in preparation or the complete and utter uselessness of the figures when produced. It is difficult to see why there should be such objections to efforts to promote efficiency: let us hope the result of investigations so far undertaken will help to convert the erstwhile objectors. We recall the words of the late Sir Gwilym Gibbon, formerly the Director of the Local Government Division of the Ministry of Health, one of the greatest of the Ministry's officials, and an enthusiastic exponent of costing—"Some of you may think that we are going costings mad. Well, my experience for the moment leads me to this inclination, that if you can find a dog that is costings mad, sell it to me and I will see it is sent adrift along the country at once, and bites a sufficient number of local authorities."

THE ANNUAL REPORT OF THE NATIONAL ASSISTANCE BOARD

The report of the National Assistance Board for the year ended December 31, 1949, is well worth reading as showing how a government department can administer a complicated social scheme with tact and imagination, having always in mind the human problems involved. The Board's officers must necessarily work in accordance with the general regulations which have been approved by Parliament, but the regulations provide scope for the exercise of initiative and discretion. The Board have tried to make it as easy as possible for anyone to apply for assistance by using forms to be obtained from any post office. At one time it would have been considered wrong, as a matter of public policy, to encourage people to apply for public aid, particularly when private charity was often available, but now it is agreed that the aged should not be allowed to suffer privation in their own homes when public help is readily available.

Approximately 2,750,000 applications for assistance were made in 1949, but the need for investigation is shown by the fact that 330,000 were not successful. At the end of December, 1,157,403 persons were drawing allowances, of whom four-fifths were old (in the sense of having reached pensionable age) infirm or sick. More than three-quarters of the allowances were paid in supplementation of non-contributory old age pensions, retirement pensions, or other insurance benefits under the National Insurance Acts. In some cases it is necessary for the Board to make allowances to old people in local authority establishments, or voluntary homes co-operating with the local authority, so as to enable the person to pay the minimum charge of 21*s.* a week and have 5*s.* pocket money. Similarly, in a small proportion of cases, it is necessary for the Board to grant assistance to needy patients in hospital to enable them to meet outside commitments or to provide them with pocket money, usually at the rate of 5*s.* a week, if they are without other resources.

Many people receiving assistance live in houses owned by local authorities and it has been suggested to the Board that it would be convenient to authorities and eliminate the risk that money included in the Board's allowances to meet the authority's rent will be diverted to other purposes, if the Board would pay the rent direct to the authority. The same suggestion has been made about rates where these are paid direct to the authority instead of being included with the rent. The Board entirely agree that they cannot continue to include payment for rent in the allowances for persons who show by their behaviour that they cannot be trusted to pay the rent. When such cases are brought to notice, their officers take steps to see that the person does not continue to misuse public money and incidently imperil his tenancy of accommodation which he may in present circumstances be unable to replace. The Board cannot, however, accept the proposal that they should exclude from their allowances and pay direct to landlords, whether local authorities or private owners, the rents of those persons, constituting the great majority of the recipients of assistance, whose conduct has never given any reason to apprehend that they will not use their allowances for the purposes for which they are intended.

The normal allowances paid by the Board are intended to meet all ordinary expenditure including clothing as necessary. If, however, the clothing of an old person is inadequate for warmth in winter, or the young children of a widow have no shoes, the question whether the old person or the widow ought to have prevented the situation must, in the view of the Board, take second place to the need of meeting the situation as it is. Sometimes this can be done with the help of stocks of clothing held by voluntary bodies, but otherwise the Board make a grant, which is usually accompanied by an intimation that it will not be repeated. Where repeated applications for a grant show that the person finds difficulty in putting money by for renewals of clothing, the Board's officer sometimes come to an arrangement under which part of the weekly allowance is set aside to be expended on clothing as occasion requires and with any supervision which may be necessary.

When the Board took over the responsibility of assisting persons who were formerly dealt with by public assistance authorities by way of outdoor relief there was some apprehension at the effect of the reduction in home visiting. It is pointed out in the report, however, that the people receiving assistance from the Board are in the main competent to manage their affairs and differ from other people only in point of income. There is, for example, no reason to suppose that the 700,000 old people who depend wholly or in part on assistance are less able to manage their affairs than many of the six million old people whose resources make it unnecessary for them to seek assistance. It is admitted, however, that the recipients of assistance include a proportion of people who need a watchful eye kept over them. In those cases regular visiting is arranged.

The need for co-operating with other social agencies is fully recognized by the Board which are always willing that their officers should, if asked, take part in the meetings of such bodies as Old Peoples' Welfare Committees, Discharged Prisoners' Aid Societies, Marriage Guidance Councils, T.B. After-Care Committees, etc.

LIABILITY OF RELATIVES

Before the scope of the Board's duties was extended by the National Assistance Act, 1948, it was comparatively rare for the Board to be granting assistance to separated wives or to unmarried mothers. The number increased, however, from 15,890 separated wives and 4,495 unmarried mothers respectively immediately after the transfer to 33,810 and 9,131 respectively by the end of June, 1949. In relation to the total extent of desertion and illegitimacy, the numbers are still small. The number of deserted and separated wives is not known, but each year some 20,000 maintenance orders are granted by the courts. Plainly the great majority of separated wives and unmarried mothers succeed in keeping independent of assistance, either because they receive a sufficiency from the person liable, or (probably more often) because they maintain themselves by their own efforts.

Of the separated wives and unmarried mothers who apply to the Board for continuing help, the majority are receiving no payment from the liable relative, and only about a fifth are receiving from liable relatives regular payments of amounts accepted as sufficient in the circumstances. In nearly half the cases the relatives cannot be traced, and there are others where the relatives have been traced, and the courts would not consider it right to enforce the liability. In the case of all such recipients of assistance, the Board's officers consider whether action should be taken under s. 43 or s. 44 of the National Assistance Act, or whether the person concerned should be advised to take proceedings. In separation cases, and to a less extent in affiliation cases, the officer usually explores first the possibility of voluntary contributions and many cases are satisfactorily dealt with in this way. If the attempt to obtain an acceptable voluntary offer fails, or an offer is made but not honoured, the Board's officer advises the woman to apply for a court order; he gives her what help he can to do so and keeps in touch with the probation officer and other officials of the court. In cases where it has seemed necessary for the woman to be represented at the hearing by a solicitor, either because the case is complicated or because it is known that the husband or alleged father of the child will be represented, the Board have arranged for a solicitor to act for her.

Where a contribution is made, either voluntarily or under a court order, the question arises whether it should be paid to the woman or to the Board. In proceedings taken by the Board under their special powers the court may order payment to be made either to the Board, or to the woman or to a third person, but such proceedings are rarely taken. Where a contribution is made voluntarily, payment to the Board can obviously only be by informal arrangement; and where one is made under a court order obtained by the woman, the order usually requires it to be made to her through the collecting officer of the court. If the amount of the contribution is sufficient to make the woman independent of assistance, and it is paid regularly, no purpose would be served by arranging for it to be paid to the Board, but if the woman still requires assistance, in spite of the contribution, either because it is not sufficient to maintain her and her children, or because it is paid irregularly, the sensible and humane course followed by the Board is to assist the woman out of public funds to the full extent of her need without regard to any contribution and for the contribution to be appropriated by the Board. In such circumstances, where payments are made under a voluntary arrangement, the Board's officer usually suggests to the woman and the man that the contributions should be paid to the Board; and where payments are made to the collecting officer, the Board's officer usually suggests to the woman that she should authorize the collecting officer to transmit them to the Board.

We have dealt with those parts of the report which are of special interest to our readers, including those concerned with the courts, but other parts of the report, to which we have not space to refer in detail, deal with non-contributory old age pensions; persons without a settled way of living; Polish resettlement; and organization. On the question of reception centres for the class formerly known as "casuals" it may be noted that there are still a number maintained in premises which were formerly public assistance institutions and are now regional hospitals. It is agreed that this is naturally disliked by hospital authorities and the Board are endeavouring to meet their objections although so long as present difficulties last it is thought that hospital authorities, local authorities and the Board will find it necessary in many places to accept the situation in which premises now classified as hospitals continue to be used for the varied purposes for which they were originally built, though the Board readily admit that the arrangement is often far from ideal for any of the parties.

In an appendix to the report examples are given of the great variety of problems which are dealt with by the Board's officers as welfare cases. This is a most interesting addition to the report which received some prominence in the daily press.

NEW COMMISSIONS

STAFFORD COUNTY

Mrs. Connie Barnard, Wetherlam, 6, Beachfields, Barlaston, Stoke-on-Trent.

John Bertram Christopher Clifford, Farley Hall, Oakmoor, N. Staffs.

Mrs. Carmen Veronica Hartley, Riverside, Trent Road, Stone, Staffs

Dr. Maud Graham Kirkwood, The Croft, Cheadle, Staffs.

Tom Barrie Lavender, 4, Wharfedale Street, Wednesbury.

Harold Tyas, 26, Lazy Hill Road, Aldbridge, Walsall.

Mrs. Winifred Hester Sutton Wallace-Copeland, Cotteswold, Rowley Park, Stafford.

James Albert Lovatt Wenger, Bury Bank House, Stone, Staffs.

John Hamilton Wedgewood, Aston, Nr. Stone.

Mrs. Florence Ellen Davies, Appy-del, Stokes Street, Rushall, Walsall.

George Harrison, 28, Turls Hill Road, Sedgley.

Joseph Jones, 35, Boundary Hill, Lower Gornal, Sedgley.

Harry Osbourne, Park Cottage, Haughton, Stafford.

Mrs. Audrey Bettina Platt, Glenelg, Birmingham Road, Walsall.

Robert Egbert Sandland, King's Barn, Farmcote, Nr. Wolverhampton.

Norman Arthur Tector, 1, Hillingford Avenue, Pheasey Estate, Birmingham, 22a.

Mrs. Margaret Wilson, 24, Lichfield Road, Stafford.

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Asquith and Jenkins, L.JJ.)

October 31, 1950

PELLY v. WOODBRIDGE URBAN DISTRICT COUNCIL

Public Ferry—Discontinuance of service—Application for interlocutory injunction to restrain discontinuance.

APPEAL from PARKER, J., in chambers.

The defendant council was the owner of a public ferry across the river Deben, leading to a road to the town of Woodbridge. On October 1, 1950, the council discontinued the ferry service on the ground that during the winter months the demand was negligible, that the ferryman had left without notice, and that it was difficult to obtain the services of another ferryman. The plaintiff, the owner of a farm adjoining the ferry, and his cottagers used the ferry as the only convenient way of reaching Woodbridge, and he applied for an interlocutory injunction restraining the council from ceasing to maintain and operate the ferry. PARKER, J., refused to make an order. On appeal,

Held, the injunction sought was in fact a mandatory injunction; an interlocutory mandatory injunction should only be granted where there was a high degree of urgency; and, therefore, as the case would come on for trial in little more than two months time and it might be difficult for the court to enforce its order, the injunction had been rightly refused.

Counsel: *Binney* for the plaintiff; *Boreham* for the council.

Solicitors: *Lawrence Jones & Co.*; *Morley, Shirreff & Co.*

(Reported by F. Guttman, Esq., Barrister-at-Law.)

KING'S BENCH DIVISION

(Before Lord Goddard, C.J., Morris and Parker, JJ.)

R. v. LONDON COUNTY SESSIONS APPEALS COMMITTEE. *Ex parte* BOWES

October 25 and 27, 1950

Customs and Excise—Prohibited goods brought to place for export—Proceedings before magistrate—Order for forfeiture and condemnation—Order for payment of costs—Right of appeal by claimants to quarter sessions—Metropolitan Police Courts Act, 1839 (2 & 3 Vict., c. 71), s. 50.

MOTION for order of *certiorari*.

Hennig & Co., diamond brokers, took to the General Post Office, London, parcels of diamonds addressed to the International Bank of Tangier. The diamonds were seized by an officer of Customs and Excise on the ground that, being goods the export of which was forbidden, they had been brought to a place for the purpose of export within the meaning of s. 177 of the Customs Consolidation Act, 1876 (applied to s. 23 (1) of the Exchange Control Act, 1947, by sch. V, Part III, para. 1). Notice of seizure was given, and claims to the goods were made by Hennig & Co., by New York companies claiming to be the purchasers of the goods, and by the International Bank of Tangier as consignees. Hennig & Co. were convicted under s. 186 of the Act of 1876 (as applied to the Act of 1947 by sch. V, Part III, para. 3), on informations preferred against them before a metropolitan magistrate, who had at the same time before him the claims of the various claimants in the forfeiture proceedings. Under s. 226 of the Act of 1876 he adjudged the goods to be forfeited, condemned them, and awarded five guineas costs to the Commissioners of Customs and Excise. Hennig & Co. appealed to the County of London Sessions against their convictions, and all the claimants appealed against the order of forfeiture and condemnation. The appeal committee quashed the convictions of Hennig & Co., and held that they had jurisdiction to entertain the claimants' appeals and that the orders for forfeiture fell automatically with the convictions. The appellant Bowes, on behalf of Commissioners of Customs and Excise, moved for an order of *certiorari* to quash the decision of the appeal committee on the ground that they had no jurisdiction to entertain an appeal against forfeiture. It was conceded on behalf of the claimants that no appeal would have lain if there had not been any order for costs or if the order for costs had been for a sum not exceeding £3, but it was contended that, as they had been ordered to pay five guineas costs, they were given a right of appeal by s. 50 of the Metropolitan Police Courts Act, 1839, which provides that in every case of summary order or conviction before any metropolitan magistrate in which the sum or penalty adjudged to be paid shall be more than £3 any person who may think himself aggrieved by the order of conviction may appeal to quarter sessions.

Held, that the words " the sum adjudged to be paid " were intended to apply, not to costs, but only to cases in which a magistrate is empowered to make orders for sums of money to be paid as a penalty, as in the case of compensation for wilful damage, unlawful pledging, or preferring of a frivolous information. The order for *certiorari* must, therefore, issue and the orders of the appeal committee with regard to the claimants' appeals must be quashed.

Counsel: *G. D. Roberts, K.C., Gerald Howard, K.C.*, and *W. H. Hughes* for the Commissioners of Customs and Excise; *R. F. Levy, K.C.*, and *B. M. Goodman* for Hennig & Co., Ltd.; *Sir Godfrey Russell Vick, K.C.*, and *T. G. Roche* for the International Bank of Tangier and other claimants.

Solicitors: *Solicitor for Customs and Excise*; *William Easton & Son*; *W. C. Crocker*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

SCHOOL DENTAL NURSES IN NEW ZEALAND

Difficulties being experienced by local authorities in this country owing to the shortage of dentists in the school dental service would be, at least, modified by the recruitment, training and employment of school dental nurses along the lines followed in New Zealand. This seems to be a fair inference from prevalent and prospective conditions in this country and from the report of the United Kingdom dental mission on New Zealand school dental nurses which has been presented to the Ministers of Health and Education and the Secretary of State for Scotland. Information acquired by the mission was considered by them to amply justify forming the unanimous opinion that the training of the New Zealand school dental nurse has resulted in a high standard of technical efficiency in the treatment of children within the limits laid down, and they further consider that, subject to staffing limitations, the dental nurse system in New Zealand meets an urgent need. The mission recognize that, should the Government of this country decide to accept some like system of dental auxiliaries, among matters for those responsible to consider would be the modifications necessary to adapt that system to the existing pre-school and school dental services in this country, and in what directions these services would require to be modified.

Recruitment of student dental nurses in New Zealand commenced in 1921, with the appointment of a group of thirty-five, the average intake for the last five years has been about one hundred, and, as a temporary measure, the annual intake now aimed at is 150. These numbers have to be set against a total population in New Zealand of approximately 1,875,000, from which there is, nevertheless, a greater demand for treatment, partly explained by a higher incidence of dental caries. Greater demand is partly responsible for a ratio of one practising dentist to 2,890 population, compared with one general practitioner dentist to about 4,400 population in the United Kingdom. Applicants for admission to the central training school of New Zealand's Ministry of Health must be over seventeen years of age and should possess a school leaving certificate; other conditions and information set out in the report of the mission indicate that entry is restricted to candidates of high quality happily reflected in the value placed upon dental nurses by various sections of the community, and full support of the scheme by the New Zealand Dental Association, who appear to take (no doubt with a good deal of justice, the mission state) much of the credit for its institution and development.

Training of school dental nurses is deliberately divorced from that of a dentist gained in an undergraduate dental school, and is given in a course of instruction over a period of two years divided into four periods of six months each. Considerable importance is attached to these divisions, the progress of the student dental nurse from one division to another being marked by a distinctive change in uniform. A comprehensive syllabus of instruction, detailed in an appendix to the report, covers preparatory work for a written and practical examination (combined with a system of grading throughout the course by periodic class examinations and marking for each piece of practical work completed) at the end of each of four courses. Student nurse wastage in New Zealand was reckoned by the mission to average about ten *per cent.*, occurring mainly in the first three to six months of training, when a weeding out process takes place. That percentage is proximate to the figure reported by the Teviot committee in dental schools in the United Kingdom. The gross cost of training a dental nurse in New Zealand is estimated to be approximately £600 for the two years, and includes a sum of £355 representing salary paid to

the trainee. After allowance for saving to the State scheme arising from the treatment of children by a student dental nurse during her second year of training, the net cost of training is, the mission were informed, about £350 per trainee.

Employment of school dental nurses in New Zealand is governed in part by the Dentists Act, 1936, s. 26 (3) (c), which permits "the performance in any public dental service of dental work by any person in accordance with the conditions approved by the Minister of Health." With the exception of the more densely populated Auckland region, each of five (out of six) regions into which New Zealand is divided has eighty dental nurses working under the supervision of a principal dental officer. Each dental nurse is visited at her dental clinic by or on behalf of the principal dental officer and a dental nurse inspector three times a year, and a report assesses the clinical work in terms of thoroughness, quality, quantity and chairside efficiency, the premises, equipment and records. The school dental nurse is instructed to telephone the Principal Dental Officer or, in his absence, the Dental Nurse Inspector in cases of any difficulty. If a dental emergency which should be undertaken by a dentist presents itself, the nurse would apply a sedative dressing and obtain authority from the Principal Dental Officer to refer to a private dentist for treatment under the Social Security (Dental Benefits) Scheme at the cost of the department. The salary of a school dental nurse is on a scale rising from £288 per annum after completion of training to £405 per annum in the fifth year, plus the possibility of allowances up to £30 per annum, *e.g.*, for additional responsibility or taking charge of clinics which are regarded as difficult centres. The report of the mission from the United Kingdom seems to point the way for the mother country to make a substantial gain from emulation of an excellent scheme evolved by a daughter Dominion which enjoys a high reputation in the field of social welfare.

VITAL STATISTICS—JUNE QUARTER

Provisional vital statistics for England and Wales for the June quarter of this year given in the Registrar General's quarterly return show that the infant mortality and stillbirth rates were the lowest ever recorded for any second quarter in this country. The infant mortality rate was twenty-eight per thousand related live births, compared with thirty in the corresponding period a year earlier and an average of forty-three for the second quarters of the ten years 1940-49. The stillbirth rate was 22.5 per thousand total live and still births, or 0.4 lower than for the second quarter of 1949.

There were 181,784 live births registered during the quarter, representing a rate of 16.7 per thousand total population. This compares with 192,038 births and a rate of 17.6 in the June quarter, 1949. For the second quarters of the five years 1940-44 the average birth rate was 16.5, for the five years 1945-49 it was 18.8, and for the ten years 1931-40 it was 15.9. Illegitimate births formed 5.1 *per cent.* of the total. This was the same percentage as that for the corresponding quarter of 1949.

Deaths registered during the quarter numbered 120,746, representing a death rate, based on the 1949 total population, of 11.1 per thousand. This was 0.1 above the rate for the same period last year, and 0.5 above the average for the June quarters of the five years 1944-48.

The births registered exceeded the deaths by 61,038, the corresponding natural increases for the second quarters of 1949, 1948 and 1947 being, respectively, 72,066, 93,336 and 117,181.

DISTRIBUTION OF GERMAN ENEMY PROPERTY

An Order In Council (S.I. 1950 No. 1642), entitled the Distribution of German Enemy Property (No. 1) Order 1950, has been made under the Distribution of German Enemy Property Act, 1949. The order provides for the collection and realization of German enemy property, and for the appointment by the Board of Trade of an Administrator of German Enemy Property with certain powers and duties for those purposes.

The order, which represents the first stage in the implementation of the Distribution of German Enemy Property Act, 1949, does not deal with the distribution of the proceeds of German enemy property which, together with related matters, will be laid down in a subsequent order. The later order will be framed in the light of the recommendations made by an advisory committee already appointed for this purpose on which the interests concerned are represented. In the meantime would-be claimants in respect of German enemy debts should not take any action.

The No. 1 Order contains provisions to facilitate the collection and realization of German enemy property with a view to the subsequent distribution of the proceeds. It prohibits dealing with German enemy property except with the consent of the administrator. Every person who holds, controls, or manages German enemy property is required to furnish particulars thereof to the administrator within three months from the date when the order comes into operation or the property becomes German enemy property as defined (whichever is the later), unless particulars have already been furnished to a custodian. A similar obligation is imposed on any company which is incorporated in the United Kingdom or which has a share transfer or share registration office in the United Kingdom as respects shares, stock, debentures and debenture stock, bonds or other securities issued by the company which are or become German enemy property. The administrator may, by notice, require production of books, documents or information. A search warrant may be granted by a justice of the peace authorizing the entry and search of premises suspected to contain German enemy property or evidence relating thereto.

The order also contains provisions relating to property subject to the Custodian Order made under the Trading with the Enemy Act, 1939, which is claimed to be outside the terms of the Distribution of German Enemy Property Act, 1949.

The No. 1 Order applies, with certain modifications, to Scotland, Northern Ireland, the Channel Islands and the Isle of Man, and comes into operation on October 23.

The address for correspondence with regard to the No. 1 Order is :

Administration of Enemy Property Department
(Distribution of German Enemy Property),
Lacon House,
Theobalds Road, London,
W.C.1.

LOCAL GOVERNMENT LEGAL SOCIETY

The annual meeting of the Local Government Legal Society will take place on November 25 at the County Hall, Westminster Bridge, London, S.E.1. The programme for the day will be as follows :

11.30 *a.m.* Address by Sir Howard Roberts, C.B.E., D.L. Questions and Discussion.

12.45 *p.m.* for 1.0 *p.m.* Luncheon at the invitation of the Chairman of the London County Council.

3.0 *p.m.*—4.0 *p.m.* Annual Meeting.

The Organizing Secretary for the lunch is Mr. F. Scott-Miller, Room 266B, County Hall, Westminster Bridge, London, S.E.1.

IN THE COURT OF APPEAL

Observe your opponent perspiring
Resuming his kicked-upon seat,
Observe him sink back in exhaustion,
The picture of abject defeat.

How nice it is not to be called on
To be told that you needn't reply,
The subsequent listening to Judgment
Is greatly enpleasured thereby.

You turn to your client triumphant
Complacency writ on your face,
You seek to convey the impression
You've pulled off a difficult case.

You take the Opinion you gave him
From where it lay well out of sight,
You place it on top of your papers
For now you are sure that it's right.

Observe your opponent disgusted,
He cannot begin to conceal
His wrath and his rage at the reasons
For thus throwing out his appeal.

The sight of you deepens his anger,
He feels it is wholly absurd
That you should be paid for your presence
When you haven't uttered a word.

But do not be too much elated,
Let sympathy lavish in lieu,
Remember you might have been called on—
Remember it might have been you.

J.P.C.

THE WEEK IN PARLIAMENT

From Our Parliamentary Correspondent

THE SOLICITORS BILL

Moving the Second Reading of the Solicitors Bill in the House of Commons, the Attorney-General, Sir Hartley Shawcross, said that it had been recognized for a long time that many of the functions of the Law Society were of such general concern and necessity to the whole body of the solicitors' profession that all solicitors, whether they chose to be members of the Society or not, should make some financial contribution towards the activities of the Society.

In 1922 it was provided that those contributions should take the form of a fee of £1 paid by the solicitor on taking out his annual practising certificate. Since then, the scope of the statutory functions of the Law Society and its various public responsibilities had increased so considerably that the revenue secured in that way had become quite inadequate. The Government had found it necessary to pay an Exchequer grant of £2,500 each year to enable the Society to discharge its vital functions.

The Bill, therefore, provided that the fee which should be payable in future, on taking out the practising certificate, should be such sum not exceeding £5 as might be determined by the Master of the Rolls, with the concurrence of the Lord Chancellor and the Lord Chief Justice. The object of the proposal was to spread the cost of those functions over the whole body of the solicitors' profession ; but to do that only in regard to those functions which were imposed by Statute upon the Law Society, and not in regard to those which were merely discretionary and which it could pursue or not as it chose and which it pursued, if it did, at the cost of the subscriptions of its own members.

Captain H. Crookshank (Gainsborough) said that the Bill had originated as a Private Member's Bill in the House of Lords. It had been introduced by Lord Schuster, and now had been adopted by the Government. The Opposition welcomed its introduction, and hoped it would have a speedy passage through the House.

The Bill was accorded a unanimous Second Reading.

CRIMES OF VIOLENCE

The Secretary of State for the Home Department was questioned in the Commons about the continuing rise in the number of crimes of violence and was asked whether he would consider the re-imposition of corporal punishment for hardened criminals in such cases.

Mr. Chuter Ede replied that he was satisfied that the penalties prescribed by law for crimes of violence were adequate. The Government had no intention of re-introducing corporal punishment which after full discussion was abolished as a judicial penalty by s. 2 of the Criminal Justice Act, 1948. That Act marked a notable advance in the treatment of offenders, and it would be premature to consider further changes in the law until more experience had been gained by its working.

Mr. Braine: " Is not the right hon. Gentleman aware that the number of crimes of violence has increased alarmingly since 1946 and is shooting up this year ? How many more victims are to suffer before he will either take steps to strengthen the police forces or to ensure that the punishment is a sufficient deterrent ? "

Mr. Ede : " I am taking steps every day to endeavour to recruit additional members of the police force, and the figures during the past year have been encouraging. I would ask the House to bear in mind that flogging was available only for a limited range of offences. In fact, for the purpose of this answer, I think I should not be oversimplifying it if I said that it was for robbery with violence. Other violent offences were not punishable by flogging. The curious thing is that the offences not previously punishable by flogging have increased by 25.76 *per cent.*, while those punishable by flogging have increased by only 1.93 *per cent.* since the repeal of the power to flog."

Mr. Fisher : " Would the right hon. Gentleman not consider that to the hardened criminal who has been convicted of this sort of offence on many occasions, corporal punishment—I mean the ' cat ' and birch —would be an effective deterrent where none other might exist, and would he not consider that explicit suggestion as a means of protection for the public ? "

Mr. Ede : " No, I have carefully gone into that aspect of the problem, and it is not borne out that the hardened criminal is deterred by this punishment. What is borne out is that corrective training and preventive detention have proved to be considerable deterrents to criminals."

LEGAL AID APPLICATIONS

The Attorney-General states in a written Parliamentary answer that from the commencement of the scheme on October 2 until the end of the month there were 9,060 applications for legal aid. Only a proportion of those applications, most of which were received in the latter half of the month, could be considered by the certifying committees and the National Assistance Board by October 31, but 773 had, nevertheless, been granted by that date. With regard to the number of applications in respect of matrimonial causes, statistics so far only related to 395 granted applications of which 340 related to divorce proceedings.

CORRESPONDENCE

[The Editor of the *Justice of the Peace and Local Government Review* invites correspondence on any subject dealt with in its columns, for example, magisterial matters, probation, local government, etc.].

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

POLICE PENSIONS REGULATIONS

I was particularly interested in your answer to P.P. 8 at p. 609, *ante*, which indicates that it is permissible for the chief officer of police, with the approval of the police authority, to extend the sergeant's service until he has completed maximum service. It appears to me that as the sergeant joined a county police force, and presumably is still serving in a county police force, the approval of the police authority is not necessary (reg. 50 of the Police Pensions Regulations, 1949). Further, unless there are some facts not revealed in the question, it would appear that the sergeant is entitled to serve until he has completed thirty years' service. This entitlement is given by the proviso to reg. 50 (1) of the Police Pensions Regulations, 1949, which continues the safe-guard set out in s. 29 (1) (*b*) of the Police Pensions Act, 1921. As the officer was not serving in a police force before July 1, 1919, the pension scale set out in the 1921 Act applied to him, and under that scale he is required to complete thirty years' service before he could retire and receive a pension for life at a rate equal to two-thirds of his pay.

The point is important to a number of police officers who are now approaching the age of compulsory retirement and, as the *Justice of the Peace and Local Government Review* is read with particular interest by most senior police officers, many of whom are intimately concerned with the operation of the Pensions Acts and Regulations, I felt prompted to comment upon the points.

Yours faithfully,
G. W. K. HEARN.
Chief Constable of Staffordshire.

Chief Constable's Office,
Stafford.

[We agree, and are obliged to the Chief Constable for calling attention to the point.—*Ed., J.P. and L.G.R.*]

PERSONALIA

APPOINTMENTS

Mr. Robert E. Huband, deputy clerk of the Frimley and Camberley U.D.C., has been appointed clerk and solicitor of the Bedworth U.D.C.

Mr. R. Smith Dawson has been appointed assistant town clerk of the county borough of Wallasey in succession to Mr. E. C. Barlow. Mr. Dawson, who is twenty-seven, is at present assistant solicitor with Wallasey Corporation and was formerly senior assistant solicitor with Cheltenham Corporation.

Mr. N. K. Cooper, assistant solicitor to the Gloucestershire County Council, has been appointed to a similar position with the Dorset County Council.

RESIGNATION

Mr. R. W. Matthews, clerk to the Chippenham bench of magistrates, has resigned. He has been associated with the work of the court for forty years and was appointed to his present position twenty years ago on the death of Mr. W. H. Barrett, to whom he had been assistant.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF COMMONS

Wednesday, November 8

SOLICITORS BILL, read 2a.
EXPIRING LAW CONTINUANCE BILL, read 3a.

Thursday, November 9

FESTIVAL OF BRITAIN (SUNDAY OPENING) BILL, read 1a.
DANGEROUS DRUGS (AMENDMENT) BILL, read 1a.

Friday, November 10

ADMINISTRATION OF JUSTICE (PENSIONS) BILL, read 1a.
RESTORATION OF PRE-WAR TRADE PRACTICES BILL, read 2a.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 74.

THE ENFORCEABILITY OF RAILWAY BYELAWS

A market porter appeared in September last, before Mr. J. P. Eddy, K.C., at West Ham Magistrate's Court. He was summoned to answer an information that on July 28 last he did unlawfully, whilst being a person in charge of a certain hand barrow upon the railway at Stratford Market Arcade, Stratford, leave such hand barrow upon the railway otherwise than in accordance with a reasonable direction of a constable of the British Transport Commission Police.

The alleged offence was charged under byelaw No. 22 (*a*) (iv) of the London and North Eastern Railway Company. The material part of the byelaw reads as follows: "No driver, conductor or person in charge of any . . . carriage, wagon . . . or other vehicle . . . shall leave or place such vehicle in or upon the railway otherwise than in accordance with any reasonable direction of any servant or agent of the company."

At the hearing it was contended, on behalf of the defendant by counsel (Mr. F. Elwyn Jones, M.P.), that the railway executive had no right to enforce byelaws made by the London and North Eastern Railway Company as the Transport Act, 1947, failed to vest them in the Transport Commission. The learned stipendiary magistrate adjourned the hearing until October 2, when he delivered judgment.

In his judgment, Mr. Eddy said that by the Transport Act, 1947, the undertakings of various railway companies, including the London and North Eastern Railway Company, were vested in the British Transport Commission on January 1, 1948. By a scheme dated November 22, 1947, the Commission delegated certain of its functions in relation to the railways to the Railway Executive. Notice that the Commission had made, and that the Minister of Transport had approved, the scheme appeared in the issue of *The London Gazette* dated December 5, 1947. The scheme came into operation on January 1, 1948.

It had been objected on behalf of the defendant that the Railway Executive had no right to enforce the byelaws made by the London and North Eastern Railway Company.

It was remarkable that, although the Act of 1947 contained no fewer than 128 sections and fifteen schedules, there was no specific reference in it from beginning to end to any byelaws.

To obtain the true approach to the problem, therefore, one must go back over 100 years to the Railways Clauses Consolidation Act, 1845. Section 109 of that Act gave power to a railway company to make regulations by byelaws. That Act was incorporated with, and formed part of, the London and North Eastern Railway Act, 1924. That was the effect of s. 3 of the Act of 1924, and it would appear that it was under this Act that the byelaws in question were made on November 2, 1926. The Transport Act of 1947 repealed various enactments but it did not repeal the London and North Eastern Railway Act, 1924, nor had the byelaws in question been revoked.

The question, therefore, was whether the right to enforce these byelaws passed to the British Transport Commission. By s. 14 (2) of the 1947 Act, the Commission, as from the date of transfer, had all rights which a company whose undertaking was vested in the Commission had. It was argued before him on behalf of the Railway Executive that those rights included the right to enforce the byelaws in question.

Subsection (3) of s. 14 contained a number of provisions relating to agreements to which railway companies were party. For present purposes it was sufficient to say that such agreements were to have effect as if any reference to any officer or any servant of a company were a reference to the corresponding officer or servant of the Commission.

Subsection 4 provided that these provisions were to apply in relation to any statutory provision as they applied in relation to any agreement to which a company was a party. By s. 152 of the Act the expression "statutory provision" meant a "provision, whether of a general or a special nature, contained in, or in any document made or issued under any Act, whether of a general or a special nature."

Before the date of transfer the London and North Eastern Railway Company had the right to enforce the byelaws in question. As from the date of transfer all rights which the company had passed to the Commission. Accordingly, in his opinion, the right to enforce these byelaws passed to the Commission. Further, any reference in a statutory provision to an officer or servant of the Company was to have effect as if it were a reference to the corresponding officer or servant of the Commission. A provision contained in a document made under any Act was within the definition of a statutory provision.

In this connexion it was to be observed that in *Hill* v. *Regem* [1945] 1 K.B. 329, Humphreys, J., had to consider the meaning of the word "document." He there held that account books, such as journals and ledgers, used by an insurance broker in his business, were documents.

In his (Mr. Eddy's) opinion the certified copy of the byelaws and regulations of the London and North Eastern Railway Company which was put in before him was a document of the kind referred to in the definition of "statutory provision" in s. 125 of the Transport Act, 1947. Those byelaws, it was to be noted, were approved by the Minister of Transport on December 2, 1926. Accordingly he (Mr. Eddy) thought byelaw No. 22 (*a*) (iv) must be read as though it referred to "any reasonable direction of any servant or agent of the British Transport Commission." He had, therefore, come to the conclusion that the British Transport Commission, through the Railway Executive, were entitled to enforce these byelaws, and consequently that this prosecution was properly brought.

Mr. Eddy said that on the day in question there was considerable congestion at Stratford Market Arcade. To relieve the traffic a constable of the British Transport Commission gave a direction to the defendant. The direction was a reasonable one and, as the defendant disregarded it, the offence alleged in the information was made out. Though he (Mr Eddy) convicted the defendant, he thought it right in all the circumstances to make an order for conditional discharge, that was to say, the defendant was discharged subject to the condition that he committed no offence during the next twelve months.

COMMENT

The writer thinks that this decision which covers an important point of law, may be helpful to practitioners generally, and accordingly it has been set out very fully.

(The writer is greatly indebted to Mr. G. V. Adams, Clerk to the Justices, West Ham, for the report.)

PENALTIES

Blaina—October, 1950—causing unnecessary suffering to a dog—three months' imprisonment. Defendant, the owner of the dog, left the dog in a locked house where it died of starvation.

Swansea—October, 1950—keeping a private house as a betting house—fined £25. Police saw seventy-six people enter the house of defendant, a fifty-two year old widow, in five days. Defendant had a previous conviction for a similar offence.

Salisbury—October, 1950—selling nylon stockings above the maximum permitted price (two charges)—fined £20 on first charge, and £25 second charge. To refund amount overcharged. Defendant sold one pair for 11*s.* 6*d.* which was 4*s.* 9*d.* above the the maximum price and another pair for 9*s.* 11*d.* which was 3*s.* 2*d.* more than the maximum price.

Salisbury—October, 1950—(1) drunk and disorderly, (2) damaging a plate-glass window to the extent of £9 17*s.*—(1) one month's imprisonment, (2) two months' imprisonment (consecutive). Defendant a man of fifty-one with seven previous convictions of a similar nature.

Dudley—October, 1950—carrying an excessive number of passengers on a coach—fined £1. Seating capacity of coach was thirty-one. Thirty-seven adults and six children were travelling on it to a football match.

Oxford—October, 1950—throwing a firework into a crowd—fined 10*s.*

Stockton—October, 1950—causing unnecessary suffering to six seven week old puppies—fined £5—forbidden to keep a dog for five years. The puppies were found abandoned in a wooden box at night in a market place. There was wire netting over the box and they were lying unprotected in a deluge of rain.

Bristol—October, 1950—receiving eighteen gallons of beer knowing the same to have been stolen—fined £20. Defendant the forty-four year old wife of the licensee of a public house.

Suffolk Assizes—October, 1950—(1) breaking and entering, (2) robbing with violence, (3) indecent assault—twelve years' imprisonment. Defendant, a thirty-four year old labourer, entered the premises of a fifty year old spinster living alone accompanied by a twenty-three year old dealer, who received a sentence of ten years' imprisonment, and put the woman through a terrifying ordeal.

Skipton—October, 1950—driving without due care and attention—fined £5. Defendant the twenty-four year old driver of a police patrol car.

REVIEWS

War Damage (Supplement). By G. Granville Slack and G. Krikorian. London: Butterworth & Co. (Publishers) Ltd. Price 15s. net.

Although this is called a Supplement to Mr. Slack's book on the War Damage Acts, it is more of the dimensions of a textbook in its own right. When war damage first came into the lawyer's field, Mr. Slack's book established itself as a valuable aid to those concerned with the subject, and the passage of time has proved its right to be deemed the standard work. It is, however, some six years since its second edition appeared; in that period there have been three Acts of Parliament dealing directly with war damage, while the Town and Country Planning Act, 1947, and the Lands Tribunal Act, 1949, have also a big effect upon the law. Part I of the present supplement comprises a noter-up on the usual lines, for the second edition of the main work, and does not call for a detailed comment. Part II gives the text of the Acts passed since 1944, annotated section by section in the manner now familiar to readers of *Butterworths Annotated Legislation Service*. Part III contains the statutory rules and orders and statutory instruments, some of which, appearing soon after the second edition of the book, were themselves revised editions of statutory rules and orders mentioned in that edition. In addition to the statutes dealing specifically and primarily with war damage, the related provisions in the Town and Country Planning Act, 1947, have added to the complications inherent in the topic, and accordingly Part IV of the supplement explains the points where the subjects may overlap. The book also gives a full list of the war damage forms in use, and of the Treasury directions under which the War Damage Commission acts. These last are not readily to be found elsewhere. For our own readers, possibly, the most important part of the book may be the War Damage (Public Utility Undertakings, &c.) Act, 1949. This had been left by the War Damage Act, 1943, for future treatment by Parliament, and in the intervening seven years there have been protracted discussions between the Government and representatives of different groups of public utilities. These provisions are difficult to follow, and the notes by the present learned editors will be most helpful. The War Damaged Sites Act, 1949, is a small Act which has given rise to a good deal of controversy. It is of direct interest to local authorities and, here again, the notes appended to it will be useful. There can be few practitioners dealing with the difficult topic of war damage who have not made the main work their principal stand-by, and they will be glad to know that this supplement gives them all that need be known about what has happened since the last edition of the main work. The main work and supplement together are available for 27*s.* 6*d.* net.

Towards My Neighbour. The Social Influence of the Rotary Club Movement in Great Britain and Ireland. By C. R. Hewitt. London: Longmans Green & Co., Ltd. Price 9*s.* 6*d.* net.

This history of the Rotary Club Movement has been written by a non-rotarian who has had full access to all relevant documents and been given all possible information. It is obviously free from prejudice or partiality, and it was a wise decision to entrust the task of writing the book to someone unconnected with the movement.

The first Rotary Club was founded in Chicago in 1905 and the movement spread to these islands in 1911, first of all to Ireland. Originally, the objects of the clubs were not in reality so wide or so lofty as those of the clubs of today, although their declared aims have always been high. In short, their motto is "service above self." At first it was said that this was largely a matter of serving each member's own trade or profession, and at the same time furthering his own personal interests through the club, but today Rotary endeavours to do service not only to the various vocations represented, but also to the community as a whole, and its philanthropic work is well known. One of its avowed objects is to promote international understanding, goodwill and peace.

There is nothing secret about Rotary and many of its meetings are reported in the press. Its membership is limited on the basis that each club should have a representative from a number of occupations, but not more than one. This was curiously foreshadowed in a club of which Addison wrote in 1710 and of which one rule was "None shall be admitted to the club that is of the same trade with any member of it." The book traces the history of Rotary, its development and its tendencies, against the background of contemporary events, political, industrial and social. Criticisms are faced and fairly dealt with, so that the book may safely be taken as a careful and accurate survey of an important modern movement.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Acquisition of Land—*Compulsory acquisition—Vendor absent, etc.*

(*a*) Where without service of notice to treat compensation has been agreed but owing to subsequent difficulties the vendor refuses to proceed or is absent, can the acquiring authority pay the money into court and vest the property under s. 77 of the Lands Clauses Act, 1845, without first serving notice to treat?

(*b*) Is it a condition precedent to the vesting of property under s. 77, that compensation money be tendered, although there is a refusal to make title? If so, how is tender made?

(*c*) Can an owner be compelled to hand over deeds after vesting under s. 75 or s. 77? If so how?

(*d*) Where an owner cannot be traced or is absent, etc., and the authority duly enter without the necessity of complying with s. 84 of the Act of 1845, is there any point in having compensation assessed and making payment into court? Would not the acquiring authority, without such payment, acquire a statutory title if the owner does not appear for twelve years?

(*e*) The joint effect of s. 58 of the Act of 1845 and s. 1 (6) of the Lands Tribunal Act, 1949, appears to be that if an owner is known but refuses to treat a reference to the Lands Tribunal is necessary, but if at the hearing the owner does not appear the tribunal has no jurisdiction and a further application must then be made under s. 6 (1) for the appointment of a member to determine the compensation in accordance with s. 58 of the 1845 Act. Is this so, or can the original tribunal proceed *ex parte* to hear the acquiring authority and assess compensation?

(*f*) What is the form of proceedings to set the sheriff in motion under s. 91 of the Act of 1845? A. "X.Y.Z."

Answer.

(*a*) Yes.

(*b*) Yes; it is only after tender that a refusal to make title sets the machinery of ss. 76 and 77 in motion. There is no statutory method of tender, but clearly, if the promoters rely on this particular branch of s. 76, they must be able, if challenged, to prove the tender, which involves adopting some formal method.

(*c*) Yes. The parties stand on the footing of vendor and purchaser on an ordinary contract: *re Cary Elwes' Contract* (1906) 70 J.P. 345. The obligation to hand over deeds is subject to recognized exceptions, *e.g.*, where the deeds relate also to other land: Law of Property Act, 1925, s. 45 (9). In *re Fuller and Leathley's Contract* (1897) 61 J.P. 454, North, J., says "there are many cases of actions for deeds." *Semble*, the action could be in Chancery for a declaratory order or in the K.B.D. for detinue: *per* Lopes, L.J., in *Wright* v. *Robotham* (1886) 55 L.J. Ch. 791.

(*d*) Certainly there is point in using s. 58. Without it s. 76 does not work, and where the owner cannot be traced, or the supposed owner is absent, etc., the promoters unless they use ss. 76 and 77 can have no assurance of title unless they comply with the Act. Even after twelve years, they might not always be secure. *See* also s. 12 of the Finance Act, 1895.

(*e*) We do not follow this. Section 6 (1) of the Act of 1949, which you mention, does not touch the matter; it is perhaps because we have not found the section you have in mind, that we do not see how the dual procedure comes about of which you speak.

(*f*) A warrant addressed to him by the promoters. No statutory form of warrant has been prescribed: *R.* v. *Lancaster and Preston Railway Co* (1845) 14 L.J.Q.B. shows that the warrant should be a straightforward requirement upon the sheriff to do what the Act provides.

2. Bastardy—*Married woman—Law Reform (Miscellaneous Provisions) Act, 1949, s. 7 (1)—Evidence necessary to enable her to proceed.*

Section 7 (1) of the Law Reform (Miscellaneous Provisions) Act, 1949, provides:

"Notwithstanding any rule of law, the evidence of a husband or wife shall be admissible in any proceedings to prove that marital intercourse did or did not take place between them during any period."

Does this enable married woman who has had a child of which her husband is not the father, to take proceedings in bastardy against the actual father, and thereupon:

(a) Give evidence herself of non-intercourse by her husband and/or

(*b*) Call her husband (subject to the provisions of subs. (2) of the section) to give such evidence without further evidence of non-access by the husband during the material time? J. AJAX.

Answer.

A woman who is or has been married who seeks to obtain a bastardy order must *first* show herself entitled to proceed as a "single" woman within the meaning of the Acts and the decided cases. By virtue of s. 7 (1) a husband and/or wife can now give evidence as to their marital relations. If this is accepted it may or may not, according to the ground it covers, be sufficient to prove not only that there was no sexual intercourse between them at the material time but also that the position was and is such that the woman is entitled to proceed as a single woman. Consideration of the cases makes it clear, however, that the mere fact of proving that there was no sexual intercourse between her and her husband does not necessarily put a married woman in the position to proceed, as a "single" woman, to obtain a bastardy order.

3.—Food and Drugs Act, 1938—*Milk sampling—Delivery and sampling at creamery.*

A farmer sells his milk under the normal prescribed contract to the Milk Marketing Board. It is collected by haulage contractors by arrangements made by the Board at a farm collecting point, and conveyed to the creamery of a commercial company. The place of delivery for the purposes of the contract and the Food and Drugs Act, 1938, is the creamery. Two milk kits are unloaded on arrival at the creamery, and placed on the unloading bay, and samples are there taken by a sampling officer. Subsequently, samples are taken by the creamery company and the milk is rejected by them and returned on the next round to the farmer. For the purpose of deciding what procedure should be adopted with regard to the three portions of the samples, was the sample taken

(*a*) on any premises within s. 70 (1); or

(*b*) at the place of delivery within s. 70 (2)?

Would the case have been any different had the milk not been rejected by the creamery company? A. "MILKSAM."

Answer.

It was, actually, on premises and at the place of delivery: this being so, we incline to the view that subs. (1) is appropriate, and this is the view taken in *Lumley's* note at p. 1412. We do not think the company's subsequent sampling and rejection affect the point put.

4.—Guardianship of Infants—*Divorce—No order as to custody of children—Both parties later marry again—Jurisdiction of justices to entertain application for custody and maintenance of children.*

A (husband) is granted a divorce against B (his wife), no order as to custody being made in respect of the two children of the marriage, who continue to reside with B. Both A and B later re-marry. B now wishes to apply before a court of summary jurisdiction for the custody and maintenance of the children. Is it possible to entertain such an application before a magistrates' court? J. NOFRA.

Answer.

We think the justices should not entertain the application. We have considered this matter on previous occasions: *see* our answers to P.P. 1 at 114 J.P.N. 23 and to P.P. 3 at 113 J.P.N. 195.

5.—Highway—*Grass verges—Byelaw limited to public footway.*

There is a byelaw in operation in my authority's area which provides that no person being in charge of a dog in any street or public place and having the dog on a lead, shall allow or permit such dog to deposit its excrement upon the public footway. Your valued opinion would be appreciated as to whether an offence is committed under this byelaw by a person having a dog on a lead who allows or permits such dog to deposit its excrement on a grass verge lying between the flagged portion of the footwalk and the kerb. Before the last war a number but by no means all of these verges were guarded by metal hoops and "Please do not walk on the grass" notices were in position but these have nearly all disappeared and the verges are now, generally speaking, quite open and unfortunately are used extensively by pedestrians. ANC.

Answer.

The byelaw is a penal enactment. The phrase "public footway" is not defined therein, but the rule that penal enactments are to be strictly construed, and in this case the reason of the thing (which is to protect the careless foot of a person who has a right to walk in the area protected from excrement) combine in our opinion to put outside the byelaw the grass verge which, although part of the highway, is not part of the "public footway." The dogs, even on leash, are

therefore, at liberty to use them: this should help to keep pedestrians off, at less expense than hoops, etc. For the status of these strips, apart from local Acts, *see* an article we printed at p. 432, *ante*, called "Ornamental Roadside Strips."

6.—Housing Acts, 1936-1949—*Individual demolition orders—Council's liability for damage to adjacent premises.*

Before the war my council had cause to make a demolition order under s. 11 of the Housing Act, 1936, in respect of one house in a terrace. The owner failed to comply with the order and in due course the council carried out the work itself under the provisions of s. 13 (1). Due care was taken in demolishing the unfit house not to damage or interfere with the flank wall of the adjacent properties, which walls were constructed and built as party walls, and the necessary rights of support were maintained. It is understood that no special works were carried out by the council to weatherproof the exposed flank walls as this was considered to be outside the scope of the council's powers and in any case not its responsibility. It now appears that as a result of the constant exposure, by reason of the fact that these party walls were not built with the intention of resisting the weather, rain has permeated through to the adjacent properties on each side of the demolished house and, as a result, there is dampness in the rooms adjacent to these flank walls. As these rooms are now themselves unfit, the council has served notices on the owners concerned to take remedial action under the Public Health Act, 1936. The owners now contend, whilst admitting the nuisance, that they are not responsible as the immediate cause of the dampness was "by reason of the act, default or negligence, etc., of the borough council itself," inasmuch as it failed to provide the necessary damp proof course or weather-proofing to the exposed flank walls in conjunction with the work carried out in the demolition of the unfit house. My council has so far resisted the claim by the owners of the adjacent properties to have the necessary works done at the council's expense and now wishes to take steps under the Public Health Act to enforce the statutory notices recently served. It is contended, on the council's behalf, that the party walls in question remain substantially as they were first built, and have not been interfered with or injured by the council as a result of the carrying out of the demolition order. Whilst there is no doubt a right of support to the owners of the two adjacent properties, it is contended that there is no such thing as an easement or right to the weather protection which was formerly provided by the roof and outer walls of the demolished house. It is further contended that the council would be exceeding its powers under s. 13 if it expended any money on carrying out positive works to the flank walls in question, so as to protect them and make them impermeable to rain, etc., and that any moneys expended in this behalf would not be recoverable from the owner of the unfit house as a debt properly due from him under the provisions of s. 13 (2).

The council will be glad to have your view as to whether it is legally responsible to do more than simply demolish the house to which the order under s. 11 related, or whether the works required to protect the adjacent and remaining properties is properly the responsibility of the respective owners of such houses. In the event of your being of the opinion that these works should now be undertaken by the council it is desired to know whether they can be recovered from the former or present owner of the site of the demolished house, meanwhile being registered as a charge of such property under the provisions of s. 15 (4) of the Land Charges Act, 1925.

ANT.

Answer.

We dealt with this at 111 J.P.N. 346 and 113 J.P.N. 241. Upon the ground there indicated, that a local authority responsible for public health ought to be a good neighbour, even when performing a statutory duty, we think the council would at the time have had a good prospect of recovering from the owner of the demolished house the cost of making the exposed party walls of adjoining houses weather-proof. But, since they did not do this, clearly the cost of making up for ten years' neglect cannot now be recovered from that owner or his successor in title. We agree that the owners of the adjoining houses cannot excuse a statutory nuisance by reason of the council's proceed-ings ten years ago, and that the council cannot be required to bear the cost involved.

7.—Licensing—*Protection order pending transfer—Whether second protection order may be granted during currency of first.*

On July 6, 1950, a protection order was granted to A in respect of X premises to sell under the licence until the next transfer sessions on October 5, 1950.

In the event of A desiring to give up occupation of the premises before the latter date, has the court power to grant a further protection order to C? NYTH.

Answer.

The protection order was granted to A in anticipation of his being a person "to whom it is proposed to transfer" the licence (Licensing (Consolidation) Act, 1910, s. 88 (1)). Until transfer the licence remains in the person who obtained renewal at the last general annual licensing meeting and he may resume authority to act under it (*Andrews v. Denton*) (1897) 61 J.P. 326; *Lawrence v. O'Hara* (1903) 67 J.P. 369).

Licensing law makes no provision for a succession of persons being authorized to sell intoxicating liquor by virtue of distinct pro-tection orders, nor have we been able to find any case law to assist us in advising our correspondent; but we think, on the principle enunciated in *Re Hollyman* (1945) 109 J.P. 95, that the implied consent to seek transfer may be retracted at any time. If A satisfies the justices that he has abandoned his intention to apply for transfer and C that he is a proper person to be granted a protection order in the place of A, we think that the granting of a protection order to C will not be un-lawful. We suggest that the endorsement of the licence with the protection order granted to C (as required by s. 88 (3) of the Licensing (Consolidation) Act, 1910) should recite that A has satisfied the justices that he has abandoned his intention to apply for transfer.

8.—Local Government Act, 1948, s. 92—*Deletion of electricity assessments—Hereditaments acquired after vesting date.*

Premises not affected by the provisions of s. 92 (3) of the Local Government Act, 1948, remain in the valuation list. As these premises were acquired by the area board after vesting date, a proposal was made under Part III of the Local Government Act, 1948, which came into operation February 1, 1950 (and *see* also s. 92 (4)) and these were deleted from rating. Rates have been paid to the latter date. The area board has applied for a refund as from the commencement of the rating period, *i.e.*, April 1, 1949. Under s. 42 (2) last paragraph "shall have effect only as from the date when the new or altered hereditament comes into operation, or as from the *happening of* the event by reason of which the alteration is made, as the case may be." In my view "the happening of the event" is the date upon which Part III of the Act came into operation, *i.e.*, February 1, 1950, and not the date when the board took over the premises. If I am correct, no refund is due.

Do you agree, please? ARGE.

Answer.

We agree.

9.—Magistrates—*Summary proceedings adjourned—Death of one justice after judgment agreed—Delivery of judgment by surviving justice.*

A complaint of desertion was heard before two justices who, at the conclusion of the case, deferred judgment for three weeks. A week before the judgment was due to be delivered, the two justices met and arrived at a decision. Two days before the judgment was to be delivered one of the justices died.

Advice is sought as to whether it is competent for the surviving justice to give the judgment on behalf of himself and his deceased colleague.

For your information, the summons has been adjourned to a date to be fixed for re-hearing before a re-constituted court, and your advice is sought by reason of the fact that the solicitor acting for one of the parties has contended that it is competent for the surviving justice to give the judgment on behalf of his deceased colleague and himself. JEA.

Answer.

By s. 8 of the Summary Jurisdiction (Married Women) Act, 1895, the Summary Jurisdiction Acts are to regulate procedure under the 1895 Act. By s. 29 of the Summary Jurisdiction Act, 1848, the two or more justices hearing a summary case "must be present and acting together during the whole of the hearing and determination of the case." In our view the hearing continues until after the judgment is given, and it is not permissible, therefore, for the surviving justice to deliver judgment.

10.—Public Health (London) Act, 1936—*Service of notice upon owner—Rent paid to collector of taxes.*

A property within the borough is, in the opinion of the council, in such a state as to be a nuisance or injurious or dangerous to health, and as such to amount to a nuisance which may be dealt with summarily under the above Act. It has been ascertained, however, that the tenant has been required by the local collector of taxes to pay his rent to the collector to settle a claim for outstanding Sch. A tax. Accordingly, it would appear that as the person who is entitled for the time being to receive the rack rent payable in respect of the premises is the collector of taxes, a notice requiring the abatement of the nuisance should be served upon this officer. He, however, states that he is proceeding under the provisions of the Income Tax Act, 1918, or alternatively under the provisions of the Finance Act, 1941, and as such in the first case is really levying the tax upon the tenant who may deduct the same from future payments of rent, or, in the second case, is merely requiring the person who receives rent to pay the same to him. Accordingly, I shall be obliged if you will let me know whether in such circumstances, the collector of taxes is the owner of the property within the meaning of the Act, or whether, notwithstanding the fact that the actual owner is not receiving any moneys in respect of the property, he is still the owner within the meaning of the Act for the reasons stated by the collector of taxes. In the alternative, if no person satisfies the definition of owner within the meaning of the Act, what action should the council take? ATAS.

Answer.

As stated in answering P.P. 4 at 113 J.P.N. 653, and P.P. 13 at 112 J.P.N. 346, we do not consider that the Revenue (or the rating authority when using its parallel powers) should be treated as "owner" for this purpose. In law, there is nothing to require this, and, on merits, to do so (even on the assumption that it could be done in law) would merely transfer a burden from the defaulter to his creditor. The council should go for the real owner.

11.—Public Health Act, 1936—*Sewerage—Connexion between districts—Rights of private persons.*

My council proposes to enter into an agreement with an adjoining rural council under s. 28, for a communication to be made between the sewers of this urban council and a defined sewer of the rural council to drain a defined part of the rural area, and for the reception into the urban sewers of the sewage from the defined sewer of the rural council. Under the terms of the proposed agreement, the rural council covenants, *inter alia*,

> "That they will not suffer or permit the sewage or drainage of any premises outside the defined area to pass into the defined rural sewer or from that sewer into the urban sewer, without the consent, in writing, of the urban council under their seal first had and obtained in that behalf."

In the event of a breach of this covenant, the urban council shall have the right to prevent the use of the urban sewer by the rural council until the breach shall have been remedied.

I should be glad of your opinion on the following points:

1. Can the rural council prevent the drainage of premises outside the defined area into their defined sewer, having in mind the provisions of ss. 34 and 35 of the Act?

2. In the event of the rural council's permitting such connexions and so committing a breach of the covenant referred to above, could the urban council enforce their remedy under the agreement to prevent the use of the urban sewer by the rural council until the breach be remedied? AOUN.

Answer.

1. If the premises outside the defined area are within district C, s. 34 will preclude the Council from refusing the sewage: *Newington Local Board* v. *Cottingham Local Board* (1879) 40 L.T. 58. Where the premises are outside district C, so that s. 35 applies, the position may not be so clear, but we do not think that "terms and conditions" in s. 35 can be stretched to the length of refusal.

2. We think this doubtful, looking to the rights given to private persons by the Act. The case law suggests that the agreement must be read as subject to those rights.

12.—Tort—*Defamation—Accusation of crime—Privilege.*

A member of the public complains to the borough council housing manager that a councillor, whom he does not name, is receiving money from applicants for council houses and in return promising to use his best endeavours to secure houses for them. The housing manager reports this to the chairman of the housing committee who reports it to the committee, the matter only coming to the town clerk's notice at this stage. The committee instruct the town clerk to ascertain from the complainant the name of the councillor and report this to the committee at their next meeting. The town clerk ascertains the name and, in view of the Public Bodies Corrupt Practices Act, 1889, reports the matter to the police. After careful investigation the police decide that there is insufficient evidence for a prosecution of the councillor. At the next meeting of the committee the town clerk will be requested to furnish the name of the councillor. Will the town clerk be liable in defamation if he discloses the name to the committee? AGA.

Answer.

In our opinion, decidedly not. The town clerk will be plainly acting in execution of a legal duty. Quite apart from this defence of privilege, there would, we consider, be no defamation. The committee know that John Doe has accused somebody. The town clerk says: "It was Styles whom Doe accused." This is a statement of fact, and carries no innuendo.

OFFICIAL ADVERTISEMENTS, TENDERS, ETC. (*contd.*)

URBAN DISTRICT COUNCIL OF FRIMLEY AND CAMBERLEY

Deputy Clerk

APPLICATIONS are invited for the appointment of Deputy Clerk of the Council.

The salary attaching to the post will be in accordance with A.P.T. Grade VIII (£685×£25—£760) for a person qualified as a Solicitor, or A.P.T. Grade VII (£635×£25—£710) for a person not so qualified.

Applicants should have had considerable experience of Local Government law and administration and should possess a sound knowledge and experience of conveyancing.

The appointment will be subject to the provisions of the Local Government Superannuation Act, 1937, and to two months' notice in writing on either side.

Housing accommodation will be provided if desired.

Applications, giving particulars of age, qualifications and experience, together with the names and addresses of three referees, must reach the undersigned not later than November 30, 1950.

Canvassing, either directly or indirectly, is prohibited, and applicants should state whether to their knowledge they are related to any member of, or the holder of any senior office under the Council.

K. S. HARVEY,
Clerk of the Council.

Municipal Buildings,
London Road,
Camberley, Surrey.

BOROUGH OF ECCLES

Appointment of Clerk to the Justices

APPLICATIONS are invited from persons duly qualified in accordance with Section 20 of the Justices of the Peace Act, 1949, for the appointment of full time Clerk to the Justices.

Applications should indicate salary required, having regard to their experience and present status.

Office accommodation will be provided, together with necessary books, stationery, etc.

The appointment is subject to the confirmation of the Secretary of State and to the provisions of the Local Government Superannuation Act, 1937, and will be determinable by three months' notice on either side. The successful candidate will be required to pass a medical examination.

Applications, giving age, particulars of education, qualifications, past and present employment, particulars of experience and the names of two referees, must be addressed to the Chairman of the Justices' Office Committee, The Court House, Eccles, not later than Monday, December 4, 1950. Envelopes should be marked, "Application."

J. L. THOMPSON,
Acting Clerk to the Justices.

INQUIRIES

DIVORCE—DETECTIVE AGENCY. T. E. HOYLAND, **Ex-Detective Sergeant.** Member of B.D.A. and F.B.D. Observations; confidential inquiries and Process serving anywhere. Agents in all parts of the country. Own car.—1, Mayo Road, Bradford. Tel.: 26823, day or night.

CITY OF MANCHESTER

Appointment of Assistant Solicitor

APPLICATIONS are invited from solicitors for appointment as an Assistant Solicitor on the established staff of the Town Clerk's Department at a salary in accordance with Grade VI of the A.P.T. Division of the National Salary Scales (£595 rising to £660 per annum). Previous local government experience is desirable.

The appointment is subject to the Standing Orders of the Council, the National Joint Council's Scheme of Service Conditions and the Manchester Corporation (Superannuation) Acts, 1920-1946.

Canvassing in any form is prohibited and candidates must disclose whether, to their knowledge, they are related to any member of the Council or Senior Officer. The successful applicant will be required to pass a medical examination.

Applications, stating age, education and experience, and the names of two persons to whom reference may be made, should be addressed to me to be received not later than December 2, 1950, enclosed in a sealed envelope endorsed "Assistant Solicitor."

PHILIP B. DINGLE,
Town Clerk.

Town Hall,
Manchester, 2.
November 14, 1950.

THAMES CONSERVANCY

Appointment of Deputy Secretary and Solicitor

APPLICATIONS are invited from Solicitors for the appointment of Deputy Secretary and Solicitor of the Conservators of the River Thames. Salary £1,300 per annum, rising, subject to satisfactory service, by two increments of £100 to £1,500 per annum, plus "London Weighting" (£30 per annum).

The appointment will be subject to the successful candidate passing a medical examination and to his being accepted by the Middlesex County Council as a contributor to the Superannuation fund maintained by them under the Local Government Superannuation Act, 1937, as modified by Local Acts.

Applicants should possess a sound knowledge of conveyancing, Common Law and litigation and have had experience in advocacy. Service with a local authority or land drainage authority will be an advantage, but is not essential. The person appointed must devote the whole of his time to the duties of the office.

Forms of application may be obtained from me and applications must reach me not later than December 15, 1950.

Canvassing in any form will disqualify.

G. E. WALKER,
Secretary.

Thames Conservancy Offices,
2-3, Norfolk Street,
Strand, W.C.2.
November 14, 1950.

LECTURES

GRESHAM COLLEGE, Basinghall St., London, E.C.2. Four Lectures on "An Outline of Common Law," by Richard O'Sullivan, Esq., K.C., on Monday to Thursday, November 20 to 23. The Lectures are FREE and begin at 5.30 p.m.

COUNTY COUNCIL OF MIDDLESEX

APPLICATIONS are invited from Solicitors of more than three years' standing for the established post of Assistant Solicitor, commencing salary £685 rising by £25 to £760 per annum (A.P.T. VIII) plus £30 London Weighting and subject to the prescribed conditions of service. Experience in advocacy and Local Government (preferably with a county or county borough council) is essential. Pensionable, subject to medical examination, the benefits under the Fund being similar to the National Health Regulations. Applications, giving full details of experience and the names of two referees, should reach me not later than December 4. (Quoting H.771 J.P.). Canvassing disqualifies.

C. W. RADCLIFFE,
Clerk of the County Council.

Guildhall,
Westminster, S.W.1.

LANCASHIRE No. 11 COMBINED PROBATION AREA

Appointment of Male Probation Officer

APPLICATIONS are invited for the above whole-time appointment.

Applicants must be not less than 23 nor more than 40 years of age except in the case of serving officers.

The appointment will be subject to the Probation Rules, 1949, and the salary will be in accordance with the prescribed scale.

The successful applicant may be assigned to St. Helens County and Prescot Petty Sessional Divisions or to St. Helens Borough at the discretion of the Committee.

Applications, accompanied by two recent testimonials, to be sent to the undersigned not later than November 30.

W. McCULLEY,
Clerk to the Probation Committee.

Magistrates' Clerk's Office,
Town Hall,
St. Helens.
November 13, 1950.

COUNTY BOROUGH OF SOUTHAMPTON

Appointment of Senior Assistant Solicitor

APPLICATIONS are invited for the appointment of Senior Assistant Solicitor at a salary within Grades IX or X (£750×£50—£900 or £850×£50—£1,000) of the A.P.T. Division according to the qualifications and experience of the person selected.

Applicants should be well experienced in local government law and administration and in committee work, and must have a sound knowledge of conveyancing, planning and common law, and be capable of undertaking a limited amount of advocacy if necessary.

The appointment, which will be determinable by three months' notice on either side, will be subject to the scheme of conditions of service of the National Whitley Council, and to the passing of a medical examination.

Applications, accompanied by copies of three recent testimonials, must be delivered at my office not later than December 2, 1950.

R. RONALD H. MEGGESON,
Town Clerk.

Civic Centre,
Southampton.
November 13, 1950.

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